IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

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Richard Cooey, et al.,	:	
	:	
Plaintiffs,	:	
	:	
vs.	:	Case No. 2:04-CV-01156
	:	GLF MRA
Ted Strickland, et al.,	:	
	:	
Defendants.	:	

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DEPOSITION

of Edwin C. Voorhies, taken before me, Julieanna Hennebert, a Notary Public in and for the State of Ohio, at the offices of Attorney General of Ohio, Capital Crimes Unit, 150 East Gay Street, 16th Floor, Columbus, Ohio, on Tuesday, October 6, 2009, at 8:30 a.m.

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- - -

Tuesday Morning Session,
October 6, 2009.
- - -

STIPULATIONS

It is stipulated by and among counsel for the respective parties that the deposition of Edwin C. Voorhies, a witness called by the Plaintiffs under the applicable Rules of Civil Procedure, may be reduced to writing in stenotypy by the Notary, whose notes thereafter may be transcribed out of the presence of the witness; and that the examination, reading, and signature of the said Edwin C. Voorhies to the transcript of his deposition are waived by counsel and the witness; said deposition to have the same force and effect as though signed by the said Edwin C. Voorhies.
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INDEX
- - -

WITNESS	PAGE
Edwin C. Voorhies	
Examination by Mr. Sweeney	5
Examination by Mr. Bohnert	244
Examination by Mr. Porter	264
Further Examination by Mr. Sweeney	269

- - -

EDWIN C. VOORHIES
being by me first duly sworn, as hereinafter certified, deposes and says as follows:

EXAMINATION

BY MR. SWEENEY:
Q. Good morning, sir. How are you today?
A. I'm well. How are you?
Q. Would you please state your full name for the record?
A. Edwin C. Voorhies, V-o-o-r-h-i-e-s, Jr.
Q. Tim Sweeney, we've met before. Nice to see you again. We're here to take your deposition today. You understand that.
A. Yes, sir.
Q. You've been deposed before in this litigation at least once maybe, correct?
A. Yes, sir.
Q. So you're familiar with the rules, but just to recap, I'm going to ask you some questions today, okay?
A. Yes.
Q. If you don't understand the question, please stop me. If you need to take a break at any time, we can do that.

A. Okay.
Q. What is your current position with the Department?
A. I'm South Regional Director for the Office of Prisons.
Q. How long have you had that position?
A. Actually I reported to the position mid-August. It wasn't actually official for payroll purposes until the beginning of September.
Q. That would have been August of '09 then?
A. Yes. I'm sorry.
Q. And so you're now the South Regional Director of the Prisons. Is that the title?
A. Yes, sir.
Q. And who do you report to now?
A. I report to Ernie Moore, the assistant director.
Q. And Mr. Moore reports up to the director, is that how that works?
A. Correct.
Q. Is there only one assistant director?
A. Yes.
Q. And I take it there's also a North Regional Director of Corrections; is that right?

A. Yes, sir.
Q. Who's that today?
A. Kelleh Konteh, K-h-e-l-l-e-h, K-o-n-t-e-h.
Q. And as the South Regional director of prisons what are your essential duties and functions?
A. The general way to describe it would be there are 16 prisons in the south region, and I have executive administrative oversight of all 16 of those prisons. The wardens, I'm the immediate supervisor to all 16 of those wardens.
Q. And would one of those prisons be Southern Ohio Correctional Facility?
A. That's correct.
Q. Commonly known as Lucasville?
A. Correct.
Q. So if we use SOCF or Lucasville, you'll know what I'm talking about.
A. They're interchangeable.
Q. Fair enough.
So the wardens then report up to you; is that correct?
A. That's correct.
Q. So Warden Phillip Kerns who is now the

warden at SOCF is one of the people that reports directly to you; is that correct?
A. That's correct.
Q. Refresh my recollection. Just before you took this position of the South Regional director what was your position?
A. I was the warden at the Noble Correctional Institution.
Q. And you did that for a period of time after you stepped down as the warden at Lucasville, correct?
A. Correct.
Q. How long did you hold the position at Noble? As the warden?
A. April of '08 until August of '09.
Q. Did you replace someone in that South Regional position?
A. Yes. I'm sorry, in the South Regional position?
Q. The position you now hold.
A. Yes, I replaced Mr. Moore who was promoted to assistant director.
Q. Did he replace somebody?
A. He replaced Mike Randall who accepted the

position of director for the state of Illinois.
Q. So Randall left Ohio to Illinois.
A. Right.
Q. So that opened up those positions.
As in your job today as the South Regional director do you have any ongoing function or duties and responsibilities with respect to executions?
A. Yes.
Q. Tell me what those ongoing duties and functions are.
A. Again it's an administrative executive oversight role. I attend the executions, witness them from the Equipment Room. Have direct involvement in issues affecting execution policy and protocol. That would be the most general way to sum it up.
Q. And at least since you've been the warden at SOCF you've attended the executions, correct?
A. Yes.
Q. And have been there present either in the Equipment Room or actually in the Death Chamber.
A. That's correct.
Q. How many executions as we sit here today,

October of '09, have you either attended as a warden or as in a higher level administrator?

A. I could tell you more accurately if you show me the list, but off the top of my head I think it's 14.

But there were a couple, I did a couple after I left Lucasville just to affect the transition and then there were I believe two that I did not witness in any way, and then I'm back on as the regional.

MR. BOHNERT: Is that 81?

MR. WILLE: Actually it's 71.

A. Yeah, 14.

Q. What is the last one on that exhibit?

A. The last one on this exhibit is Fautenberry.

Q. It would have been Marvallous Keene after him?

A. I did not witness Marvallous Keene but I did witness Getsy.

Q. So that would be 15?

A. That would be 14.

Q. That would have been the 14th, Getsy?

A. Yes.

Q. As in connection with your duties today are you -- do you continue to participate in the practice sessions at the execution team?

A. No. The only way that would typically occur is if there was some significant development or change in the protocol or something like that or when our legal team goes down to brief the team on current legal issues, I typically go to those just to help answer any questions or clarify any concerns.

Q. But with respect to the three or four practice sessions that precede any given execution, you're no longer attending those?

A. That's correct.

Q. As either a warden or a member of the team or in any capacity; is that right?

A. That's correct.

Q. Tell me about the protocol, what is your involvement with that in your current position? The protocol procedure.

A. I guess I would ask you to clarify your question. Are you talking protocol development?

Q. Yeah, let's start with that. Protocol development.

A. If there's going to be a change or

addition, deletion, any kind of alteration to the existing protocol, I will have some involvement in the planning, discussion, and finalization of those.

Q. So you are involved in that process.

A. Yes.

Q. What is the process for that? If you could outline that for us. If there's going to be a change, for example, maybe we can use the May 2009 protocol as an example. My understanding is there was a new protocol adopted effective sometime in May of '09, correct?

A. That's correct.

Q. And that's an exhibit here somewhere.

MR. BOHNERT: 12A.

MR. SWEENEY: I think Exhibit 12A is the May 2009 protocol. Do you have a copy of that, Chuck?

MR. WILLE: Yes, I do.

MR. SWEENEY: Would you mind handing that to the witness.

Q. And just for the record, this is the execution protocol with the number 01-CON-11 and it has an effective date of May 14, '09; is that correct?

A. That's correct.

Q. And is what we are looking at here Exhibit 12A the current protocol with respect to the executions in the state of Ohio?

A. Yes, except I would differentiate between policy and protocol. Although protocol is incorporated into the policy, there are elements of the protocol that are not reflected in policy. There's a difference.

Q. What is this that we're looking at?

A. This is our execution policy.

Q. So this is the policy. And is that the term you're most comfortable using to describe this document?

A. Yes.

Q. The written execution policy, and you'll agree it is a written policy, correct?

A. Yes.

Q. And it was effective May 14 of '09, right?

A. That's correct.

Q. Now, when you say protocol, you're making a distinction and a differentiation. Could you explain what you mean by that?

A. There are specific steps in a generalized sense. Policies are never intended to capture or document every individual step of the issue that the policy governs.
So, for instance, in the execution we have a checklist that we use in the cell that assists the medical team members with the insertion of the IV lines. You wouldn't see that in the policy.
But it's an element, it's a part of our protocol. The policy is the broader overarching guidance that dictates the issue. In this case executions.
Q. With respect to that checklist --
MR. BOHNERT: Two different checklists.
THE WITNESS: This is another example of the same thing. This is not attached.
Q. And you're pointing, when you say "this," you're pointing to Exhibit 73? Which is titled what?
A. The Equipment Room and Execution Checklist.
Q. So that would be an example anyway of something that is not, at least not now in the written execution policy but you would consider a part of the protocol with respect to lethal injection

executions.
A. Yes, I would.
Q. And Exhibit 74, I'm handing you that, that's been previously marked and has 13 little points there on various looks like procedures or key points in connection with the execution.
Is that another document that you would consider part of the protocol but perhaps not actually in the policy?
A. Yes. That's the document I was referring to.
Q. Fair enough.
The document you were referring to as being in the Equipment Room that the team uses to help them.
A. The cell where the inmate resides.
Q. Fair enough, in the cell. In the holding cell.
A. Correct.
Q. For use during the IV insertion part of the process.
A. Yes, sir.
Q. Are there any things that are not in the written policy Exhibit 12A that you would consider

significant or important?
A. None that I can think of.
Q. In other words, with respect to the procedures that are to be followed, is it your belief, your testimony that all of the significant procedures, the important ones are addressed in the written policy?
A. Yes.
Q. Did you have any involvement in the development and implementation of this new policy effective May 14, '09? I should say revised policy.
A. No, I did not.
Q. So you had nothing to do with that? Is that your recollection?
A. Yes, it is. There were -- that was in that time frame I was at Noble. I wasn't attending executions any longer. Then the new warden had already conducted three I believe by then or four maybe. So, no, I was not directly involved in this revision.
Q. So when there is or if there is some time after May 14, '09 a new or a revised version of this written policy, is it your testimony that that will be the first time you've actually participated in the

process?
A. No.
Q. In connection with the revision of the policy.
A. With this one. But I've been associated with I believe two other revisions to the policy if you go back to the point at which I was the warden at Lucasville.
Q. So is the warden at Lucasville also somebody who would be involved in the changes, notifications, additions, deletions to the written policy?
A. Yes.
Q. Just sketch for me if you would what that process is. Sort of from beginning to end.
A. The revision?
Q. Yeah. Somebody wants to make a revision. What is the essential process that it goes through?
A. A consultation would occur between the chief legal counsel and potentially other counselors for our Department. The director, myself, the warden at some point is obviously going to have a role depending on what proposed change is being discussed.
Even down to consulting with the team

Page 18

leader and team members if we were actually discussing a proposed change to some specific procedure affecting the team. We try to keep that a very open collaborative process.
Q. The chief legal, is that Greg Trout?
A. Yes.
Q. And who is Austin Stout? What is his position?
A. Another one of our legal counselors.
Q. Works for Greg Trout so to speak?
A. Correct.
Q. And the Director is obviously Director Collins. And the South Regional director would be you at this time.
A. That's correct.
Q. Is the North Regional involved in this type of thing?
A. Not in my experience.
Q. That's because of the prison at which the executions are conducted is not within his scope of authority; is that right?
A. That's correct.
Q. And then the warden that would be involved would be the warden at Lucasville.

Page 19

A. Correct.
Q. Not wardens at other institutions.
A. That's correct.
Q. Not opened up to anyone who might have some interest.
A. No.
Q. Have there been to your knowledge any proposals or discussions concerning changes to Exhibit 12A since May 14 of '09?
A. Yes.
Q. Can you tell me about those?
A. There have been discussions, the Director and his staff of which I'm including myself, are discussing in the broadest terms our authority within the established Revised Code governing executions to consider a drug or combination of drugs, whether it be the same drug that we currently use or different drugs, as well as alternative methods of delivery for those drugs to augment the existing policy.
Q. And the Revised Code you're referring to is a statutory provision that actually says in words to the effect that the execution shall be conducted by lethal injection using a drug or combination of drugs.

Page 20

A. That's correct.
Q. Are you also considering in connection with these discussions proposed changes or revisions to this policy statutory provision that it is to be quick and painless?
A. The -- yes. There's not been any discussion about that language in the policy, but that guidance is very clearly a factor in any and all decisions that we're considering about method of delivery or types of drugs to be utilized.
Q. So in other words, the view would be as the team that would be working on this, the director and his staff, that the statutory requirements are going to have to be met with whatever changes are adopted, correct?
A. Unequivocally.
Q. If any.
A. That's correct.
Q. And those statutory directives would include the drug or combination of drugs, correct?
A. That's correct.
Q. As well as the statutory command the death be quick and painless.
A. Correct.

Page 21

Q. Now, what -- has there been any consideration given to using different drugs than the drugs currently used?
A. Yes.
Q. Can you tell me which drugs and which changes?
A. I can't -- no decisions have been made about what drugs we would use. There's been discussion about the matter of -- the expert that we have used in the past who has testified for states all across the country has advocated a single drug protocol.
The courts have alluded to we've had discussion about the fact the courts have pretty much said it's not up to us to tell you how to do your protocol but very clearly a single drug protocol might be worth considering and in as much said that there's testimony out there that points towards the efficacy of a single massive dose of thiopental sodium.
Q. And the expert you're talking about would be Dr. Mark Dershowitz?
A. That's correct.
Q. And the single massive dose would be of

sodium thiopental?
A. That's correct.
Q. Is that what's at least being talked about at this point?
A. Yes.
Q. Any other drug being considered for a single massive dose other than sodium thiopental?
A. Yes.
Q. And can you tell me which ones have been considered or discussed?
A. Considered and discussed has been a single dose of Hydromorphone.
Q. Can you spell that please?
A. H-y-d-r-o-m-o-r-p-h-o-n-e.
Q. Hydromorphone. Do you know anything about what that is?
A. Enough to be dangerous.
Q. Okay. That's more than I know.
MR. BOHNERT: To who?
A. To my understanding or to help a lay person such as myself understand it, it is a water soluble opiate that is commonly used for end-of-life pain management.
Q. I see. And has there been discussion

about whether a single massive dose of that drug Hydromorphone would cause death?
A. Yes.
Q. And what have you heard about that or what have you been told about that?
A. That it would be efficacious.
Q. Any dosages that have been mentioned or discussed with respect to that drug as to how much you would need?
A. Yes. But I don't know that that's been finalized. Mr. Dershowitz, Dr. Dershowitz was used to finalize the research that we've asked him to do.
Q. So has he been asked then to undertake a project in connection with this effort?
A. In as much he was already, his services were already retained as other our medical expert.
Q. Were these requests to him made in writing or orally or how were they done if you know?
A. I don't know.
Q. Were you involved in making those requests to Dr. Dershowitz?
A. No.
Q. He's from Massachusetts?
A. That's my understanding.

Q. But somebody made a request to him as far as you know.
A. Yes.
Q. To engage in some investigation, research, analysis, as to what alternatives there might be available that would be different than the three drug protocol that is currently being used in Ohio; is that right?
A. That's an accurate assessment.
Q. One of the things you've been informed about at least with respect to things under consideration would be a single dose of this Hydromorphone.
A. That's correct.
Q. As well as a single dose of sodium thiopental.
A. That's correct.
Q. We've heard testimony from Dr. Dershowitz and others as to the dosage of the amount of sodium thiopental that would generally be needed to cause death in the typical person.
Do you have any understanding from your involvement in this process as to what that dosage would be?

A. Only predicated upon the record of his prior testimony I want to say in the Tennessee case, if memory serves. He was on record as testifying to a 5 gram dose of thiopental by itself, waiting five minutes, assessing for signs of life, and if they still exist, administering a second 5 gram bolus.
Q. Is it 5 grams or milligrams?
A. Grams.
Q. 5 grams. So has that been what's been communicated to you insofar as what's being considered or discussed in Ohio, 5 grams? Or not?
A. Actually very little discussion on that specific, at least from my assessment, mainly because he's already on record as advocating that single drug protocol.
Q. At that dosage level.
A. Correct.
Q. So is it your understanding or belief that you've pretty much gotten kind of his best judgment as to what you would need if you were going to do a single massive dose of sodium thiopental?
A. Yes.
Q. Via the testimony he's given in some of these cases.

A. Yes.
Q. Including perhaps Tennessee.
A. That's correct.
Q. And with respect to Hydromorphone, any similar advice or direction from him as to how much you would need of Hydromorphone?
A. Yes, but I'm trying to remember the dose and the little acronyms, because I'm not a medical guy. I want to say that what was discussed was 150 milligrams per one ml dose.
Q. I see. And that is an opiate of some sort; is that correct?
A. Yes. And in that dose a highly concentrated.
Q. Do you have any understanding from either Dr. Dershowitz or from any other source as to how long it would take for the average individual to die from that size of a dose of Hydromorphone?
A. That has not been shared with us yet. I believe just given the expectations communicated by the director in terms of being quick, being effective and relatively quick, I believe the preliminary discussion was such that he believed it would meet a reasonable time frame.

But I've not seen anything or discussed the specific time frame that he said it would result in death in X number of minutes. That I've not received.
Q. Do you have some sense in your mind as somebody who's sort of involved in the consideration of this issue as to what a reasonable time frame you would expect a reasonable time frame to be? In other words, you would expect it to be in terms of minutes?
A. We're still talking about a single massive dose of either an opiate or a barbiturate by itself?
Q. Yeah.
A. Myself and the research that I've done and the discussions that I've been a part of, 20 to 30 minutes we ought to be seeing a point at which we can at least be assessing for signs of life.
Q. So would that in your mind be the outer limits of what you would expect?
A. Not necessarily. I wouldn't want to define that. I'm not as well versed on that as I expect to be in the near future.
Q. And I'm just recalling some of the testimony from the preliminary injunction hearing in

some of the depositions that a were done in connection with that as well as in connection with trial preparation for this case.
Testimony to the effect I think from Dershowitz and perhaps also from Dr. Heath that a single massive dose of the sodium thiopental you're looking at relatively quick death in terms of five, ten minutes is what I recall. I could be wrong but the record will be what it is.
Is it your understanding that the single massive dose of this Hydromorphone would take longer than a single massive dose of sodium thiopental or do you know?
A. I don't know enough about it to make that distinction.
Q. Have you yourself done any -- I remember from you're prior testimony that you yourself would kind of dig in and do your own research and kind of roll up your sleeves and get involved in some of these issues. I remember that from what you testified about.
Is that something you've done with respect to some of these alternatives that are being considered?

At least to this point have you done that or is that something you intend to do in the future?
A. Yes, and yes.
Q. So you've done some already.
A. And when you asked that question I'm also going back to research that I had done when I was still the warden at Lucasville.
Q. Okay. I knew that you had testified before that you do -- you did kind of take this as something that you needed to get involved in because you had responsibility and you viewed it that way.
A. Still do.
Q. I understand that. And I think that's important. And I think the judge obviously in the preliminary injunction record thought that was impressive insofar as your contribution to the team.
But your testimony is that you're continuing to do that even now as the South Regional director.
A. Yes, sir.
Q. And can you outline for me if you could what types of things you've gone to, what types of sources, if you could do that?
A. Actually it's a continuation of research

that I did when I was the warden still at Lucasville, and that is the exploration of the different methods of delivery for the drugs.
Q. By that you mean something different than channeling the drugs through IV tubes from a room ten feet or eight to ten feet away through IV insertion points in peripheral veins.
A. That's correct.
Q. Because that's obviously how we do it now, right?
A. That's correct.
Q. And that's the only method of delivery that's addressed or contemplated in the policy, correct?
A. That's correct.
Q. And there's no protocol using that term sort of in the broader sense that you've used it, there's no protocol in Ohio for any alternative method of delivery other than that method as we sit here today; is that correct?
A. And that fact --
Q. Is that correct though?
A. Yes. And that fact is the predicate for going back to your original question of how do you

start the process, that's what has started this process. Once again considering revisions.
Q. And I want to do that one, I want to hear about what you investigated about alternative methods of delivery.
But are there any other means of causing death via drugs or combination of drugs other than what we've talked about that you've investigated or have been considering at least to this point as far as you know?
A. Not to my knowledge.
Q. So the Hydromorphone and perhaps the single massive dose of sodium thiopental.
A. That's correct.
Q. Is it your knowledge or do you know whether a decision has been made to this point by anyone, either the director or the Governor or anybody, or yourself, that the protocol and policy will in fact at some point be changed to eliminate the usage of pancuronium bromide?
A. No, I can tell you that no decision has been made about abandoning the existing combination of drugs. The director has been clear that this is research to explore the types of drugs used whether

it be a single drug or a combination of drugs at one end of the spectrum to include maintaining our existing protocol.
Q. So these are all options, so to speak, on the table.
A. Yes.
Q. And nothing's been decided with respect to any of these options at least as we sit here today.
A. I can tell you that definitively.
Q. And on October 5 of '09 it's all still being evaluated --
A. October 6 of '09.
Q. Is it the 6th?
A. It's all being decided.
Q. Is it fair to say, accurate to say I guess that consideration is nevertheless being given to ceasing usage of either all three of the drugs currently being used or at the very least the two, quote/unquote, painful drugs, the second two drugs in the process?
A. Yes, consideration is being given.
Q. Do you have a view on that as you sit here now as to whether those drugs should be used or

not used if you do make changes?
A. No.
Q. You don't have an opinion on that?
A. Yes, I do.
Q. What's your opinion?
A. That our existing protocol is constitutional and I wouldn't have any qualms about continuing our protocol.
Q. Even after what happened to Mr. Broom? Is that your testimony?
A. I see no association to the three drug combination that we currently use. There's no association between what happened to Broom and our current three drug combination.
Q. Is it your -- is it the same testimony though you have no problem with the protocol as it's currently being applied and used if we focus on the issue of delivery? In light of what happened to Mr. Broom?
A. What I would say is that the Broom experience prompted the exploration, actually refreshed the exploration of an alternative means of delivery. That's the issue.
Q. And was it the Broom experience on

September 15th that prompted the evaluation of the possible use of perhaps Hydromorphone?

A. Well, it opened that discussion that resulted in the study and the research exploration, yes.

Q. So I just want to make sure so my head is clear in terms of a timeline.

Whatever evaluations have been done by Hydromorphone or perhaps a single massive dose of sodium thiopental, is it accurate to say that that evaluation, investigation, research, analysis being conducted by Dr. Dershowitz and others on your team really had its genesis with what happened to Mr. Broom on September 15?

A. Yes.

Q. So it wasn't happening before that, correct?

A. That's correct.

Q. Back to my question though on the issue of delivery. You understand that with Mr. Broom's case on the 15th of September there was an issue about getting access to the veins which are the delivery portals, so to speak, for the drugs, right?

In other words, you can't do an execution

in Ohio unless you have access to the peripheral veins. At least as the protocol --

A. As the current policy exists, yes.

Q. And so what happened to Mr. Broom made it when the team wasn't able to get access to the veins on that day there was no way to go forward with the policy on that day; is that correct? As currently written.

A. That's correct.

Q. Is that something that you believe creates a problem with respect to the protocol and the policy in terms of whether it will be viewed as constitutional or not, or do you still maintain that it's constitutional and we don't need to be concerned?

A. Completely convinced that it's constitutional. The issue that resulted with Broom was we couldn't establish useable veins. But that's operating under the presumption that that's the only method for delivering the drugs, as it's currently written in the policy.

Q. And is it, quote/unquote, constitutional in your view, whatever that may mean to you as a lay person, but an informed lay person in this field,

right?

I mean you're not an attorney but you are an informed lay person, really probably not even -- more of an expert in this field.

A. I would think.

Q. That it is, quote/unquote, constitutional to proceed with an execution in the state of Ohio with only the one method of drug delivery contemplated by the protocol as currently written and the policy as currently written?

A. Yes. But that's why we're exploring the issues that we're currently considering.

Q. Let's talk a little bit about the issue of delivery.

Are there being considered at this time -- let me ask, prior to what happened to Broom on the 15th were you ever involved in considering other methods of delivery other than peripheral vein access?

A. Yes.

Q. Can you tell me which ones you've been involved in considering?

A. Been involved in the consideration and research of interosseous infusion.

Q. And that's, for the record what is that? What does that mean?

A. There's actually different devices that achieve the same result, but it is the insertion of a portal into the two primary injection sites either the top of your tibia, the long bone in the leg, in your lower leg, or in the top of the sternum, which are both commonly used access points by combat medics and paramedics in the field.

Q. Tell me when you first began giving consideration to interosseous infusion if you can recall.

A. I began doing my own research for that after the Clark execution.

Q. What type of research did you do? I mean I suppose one type of research would be just sort of getting on the Internet or going to the library and looking at written materials, literature, things like that. Is that one thing you did?

A. That's one part.

Q. Did you do anything else besides that?

A. Talked to paramedics who had actually used the device, inquired about their protocols in terms of at what point do you abandon attempts to

Page 38

establish an IV and go to the interosseous device?
Q. Anything else involved in your research other than speaking with paramedics and doing book and perhaps Internet?
A. No.
Q. Did you consult with any manufacturers of these kinds of devices, anything like that?
A. No.
Q. Consult with Dr. Dershowitz about that issue?
A. No, I have not.
Q. Consult with any physicians or people like that?
A. No.
Q. The paramedics that you would have spoken with or consulted with, that was more than one?
A. Yes.
Q. And were they people here at the Institution -- well, at Lucasville or what?
A. No. One was a DRC employee but not an employee at Lucasville.
Q. Was he somebody on the medical team?
A. Yes.
Q. Team Member 18 perhaps?

Page 39

A. Yes.
Q. So just so the record, the relatively large gentleman who we've deposed before?
A. No, no, I'm sorry that's not No. 18.
Q. Okay. Team Member 17?
A. (Indicating.)
Q. Why don't we get the list so you can refresh your memory on who's who.
A. I'm not too good at numbering people.
Q. We don't want to use their names.
A. I understand.
Q. And I don't want you to give me their names obviously.
(Off the record.)
A. Yes, it would be 17.
Q. So Team Member 17?
A. Yes.
Q. Anybody else that you consulted paramedic-wise?
A. Yes.
Q. And were they --
A. Completely removed from our Department, happened to know they're a paramedic and have used the device.

Page 40

Q. So people who you knew in your life outside of the institution.
A. That's correct.
Q. What did you hear from the paramedics, if you could summarize?
A. That the protocol varied just slightly but that the protocol for using interosseous was they would try to go IV first if drugs were indicated, particularly using critical care where delivery of drugs and the time with which those drugs are delivered would be life and death.
Their protocol varies between two to three attempts to stick an IV or anywhere the range of 60 to 90 seconds, whichever comes first. Make two to three attempts and if they're unsuccessful you go to IO.
Q. And what did you learn from the paramedics or from your research to the efficacy of IO in terms of how it functions as a drug delivery device?
A. That it's easily achieved as a reliable source of delivering the drugs. And then my continued research seemed to support that in that interosseous delivery of drugs is believed to be

Page 41

quicker than delivery of drugs from peripheral veins. It equates with a central line delivery IV.
Q. In connection with the issue of how fast the drugs once in the body performed that function and gets to the nervous system and the heart or wherever they're supposed to go.
A. That's correct.
Q. You're not saying faster in the sense that from the time you begin the process until the drugs --
A. The term is "absorption." The absorption rate is comparable to a central line IV.
Q. And is it when you do an interosseous, and I'm not familiar with it, but when you do it and you do it either in the tibia or in the sternum, is there anything you have to hit?
I mean like with an IV you got to hit the vein. What about with this interosseous, is there something you got to hit? Or stated another way, something you better not hit? That kind of thing?
A. The answer is no. The device, and there's actually a variety of devices that all accomplish the same end result in terms of how it inserts the portal.

There's one that you can look at on YouTube of what appears to be like a spring-loaded device that has guides on it that are -- they determined that the amount of pressure you have to put on it before the spring inserts the portal.

Q. I see.

A. **And it controls the depth, so to accomplish what you're doing is getting the injection port into the bone marrow. The bone marrow is connected to our deep venous system.**

The blood flows through your bone marrow and literally goes right into deep veins within our legs and arms, all that,

So all you have to do is go through the plate of the bone, get that portal into the marrow, and the device is designed as such to get the portal through the bone plate into the marrow.

Q. Is it the kind of thing where you can -- is it something you can even -- can you miss? You know what I mean? Or is it essentially foolproof?

A. **Not being an expert, it's characterized as being foolproof.**

Q. So it's the kind of thing that -- but the paramedics use it as a sort of a secondary measure

when they're seeking to get drug delivery in a critical care patient, they try IV first and if that doesn't work then they go to this method?

A. **That's primarily accurate. Except there's contingencies that if they pull up onto a trauma victim who's limbs are seriously disfigured, they won't even attempt an IV, they'll go right to an interosseous.**

Q. So that would be their primary in that situation.

A. **Right.**

Q. Have you seen interosseous done on a person?

A. **No.**

Q. Have you observed that to this point?

A. **I've watched the video of it being inserted on a live conscious soldier who's not anesthetized in any way.**

Q. Is he in a sense basically a guinea pig for that purpose volunteering?

A. **He's the ones gutsy enough to be the demonstration person. And they actually infused the saline into him.**

Q. It wasn't an injured soldier?

A. **No.**

Q. Did they go sternum?

A. **Sternum in that case.**

Q. What have you heard or learned with respect to the issue of how painful this type of process can be?

A. **That the use of the tibia as a site can be, if time permits, prefaced with a topical anesthetic so that the actual insertion doesn't -- isn't even perceptible.**

But as I said, the sternum case that I viewed online was literally an unanesthetized soldier and he then is talking to his fellow soldiers after it's inserted and they start running the IV and he's telling them how he can feel the IV going into his circulatory system.

Q. I see.

A. **He said that he could feel the pressure being applied by the combat medic who inserted it, said he could feel the pressure that he had to exert for the spring to release but he couldn't feel the insertion.**

Q. Do you have a sense as to how deep the incision into the body is, an inch, two inch, three?

A. **It's less than an inch.**

Q. We have some -- not "we," but the State, I think Warden Kerns perhaps, one of the wardens ordered some of these IO guns. Is that what they're called, guns?

A. **That's one device. It looked, for lack of a better -- I don't want to sound crude, but it looks like a miniature screw gun.**

But there are other devices that the device I described on the video is a cylinder maybe an inch and a half in diameter and looked to be three to four inches long that you just held in your hand and put it perpendicular to the sternum and applied the pressure acquired to release the spring into the injection port.

Q. In connection with your research or your discussion of paramedics, have you heard or learned about any issues, things that need to be avoided with IO devices? Things that you would want to be concerned about or that you would have concern about?

A. **The only contraindications that I recall are warnings about if it's feasible to do so, to sterilize the injection site at the top of the tibia.**

Because if it's -- if they've got dirty

Page 46

skin or they're in an auto accident and they've got gasoline on their leg, you could be pushing that foreign substance on the skin right into their bone marrow.
Q. I see.
A. And then there's, I forget the medical term, some medical term for a problem that can be associated with their bone marrow because you forced that foreign substance into the bone marrow.
Q. Are there any patients based on your research for whom IO infusion of drugs would not -- would be dangerous or inappropriate to your knowledge based on your research?
A. Not to my knowledge. I remember seeing some contraindications about people who had like bone cancer, their bones might be so brittle that would not be a good idea.
Q. Are there any drugs to your knowledge that are not to be used in that form? In other words, should not be injected into the bone harrow?
A. Yes, there are drugs that again from my lay understanding.
Q. Right, that's all I'm asking.
A. There are drugs that the pH balance would

Page 47

be different, that it might require a preanesthetic to be delivered before you delivered that particular type of drug.
Q. Because once the drug gets into the system, it would be painful otherwise as it goes through the bone marrow, is that the thinking?
A. Yes, there would be some degree of sensation because of the pH imbalance.
Q. Have you done any research or investigation into the issue of the usage of any of the three drugs in the policy currently, the sodium thiopental, pancuronium bromide, potassium chloride, as to how those drugs, whether those drugs can be used in an interosseous fashion into the bone marrow without anesthetic?
A. Yes.
Q. And what have you determined or what has your evaluation caused you to learn?
A. The feedback that we received was that the thiopental sodium would need to be prefaced with some other type of anesthetic. That it could cause a burning sensation if delivered directly.
Q. The first drug could.
A. The thiopental sodium.

Page 48

Q. So you need an anesthesia for the anesthesia, so to speak.
A. Right.
Q. That's interesting. Okay.
A. And it's my understanding that there are anesthetics that are water soluble that would quickly anesthetize the bone marrow and then there would be no sensation.
Q. Hydromorphone one of those?
A. Yes.
Q. That would serve in that -- that would function in that way. In other words, it could be injected first either would it be, would the thinking be it would be done interosseously?
In other words, if you're trying to -- I know you're not an expert but you know more about this than I do.
But if you're trying to interosseously inject sodium thiopental and you wanted to prevent that pH imbalance issue causing pain, you with me?
A. Yes.
Q. Would you then want to inject whatever anesthesia you were going to use to prevent that pain, would you want to inject that interosseously as

Page 49

well?
A. Yes. But it would not be Hydromorphone is not what's typically used.
Q. What is?
A. Lidocaine.
Q. And that would be done interosseously; is that correct?
A. If you were planning on delivering thiopental through an IO.
Q. And if you wanted to deliver Hydromorphone through an IO and used that as a, for example, the anesthesia that would be used preparatory to pancuronium bromide or potassium chloride, would you need --
A. We've not had any discussions about combining or inserting Hydromorphone into the three drug protocol through an IO delivery.
Q. So your discussions of Hydromorphone, HM, we can abbreviate it as, have been solely confined at least to this point to usage as a potential single drug massive dose.
A. That's correct.
Q. But in connection with the IO issue, the drug that you've had discussions about or at least

you've investigated or come to conclusions about that would be used to anesthetize if sodium thiopental was going to be used interosseously is Lidocaine.

A. Yes.

Q. Anything else that could be used that you're aware of?

A. The Hydromorphone could be used by itself.

Q. Could be used by itself.

A. As the single drug massive dose.

Q. With no other drugs.

A. With no other drugs, because it's the hydro means it's water soluble and doesn't create the pH imbalance.

Q. So have there been any discussions amongst this team of people who are involved in this process of using Hydromorphone interosseously?

A. Yes.

Q. And what is the status of those discussions?

A. Undecided until we get the results back from Dr. Dershowitz.

Q. And what specific results are we looking for here? What are we waiting for from Dershowitz,

results from what?

A. I mean the courts have relied upon his testimony along with Dr. Heath on the pharmacology and pharmacokinetics of drugs. He's developing the same sort of analysis, if you will, that he's rendered for the courts on numerous occasions.

Q. I see.

A. On the pharmacology and pharmacokinetics of that particular drug.

Q. Hydromorphone.

A. Yes.

Q. And by that -- because those two words, I don't understand what they mean. Pharmacology, I mean I have a rough understanding of pharmacology, pharmacokinetics.

But essentially what you're saying is information as to how they interact in the body, how quickly and what the expectation would be in terms of time for death. Is that basically it?

A. That would be an accurate assessment.

Q. So consideration is being given to using Hydromorphone interosseously.

A. Yes.

Q. That's one of the things.

A. That's one of the delivery methods.

Q. And the way we started down the path of IO, I asked you were there any other delivery methods you had investigated prior to Broom. And I think you testified that you did some investigation of IO post-Joe Clark; is that correct?

A. That's correct.

Q. And I imagine that investigation has continued even as we speak, right?

A. That's correct.

Q. Any other methods of delivery, alternate delivery devices or procedures you've considered? And again prior to Mr. Broom's attempted execution on the 15th.

A. Yes.

Q. Which ones?

A. Intramuscular injection.

Q. What is that?

A. Getting a shot in the butt.

Q. Really?

A. Or in your upper arm. The most common method of delivery for drugs being injected into our system.

Q. Intramuscular. And is it your testimony

that's something that you've at least considered or evaluated or investigated before September 15?

A. Yes, that's correct.

Q. When did you first take a look at that?

A. Again, post-Clark.

Q. Any others, any other delivery methods or devices that you've considered or evaluated or researched?

A. Prior to Broom? Are we still on that same premise?

Q. Yes.

A. Yes.

Q. What are they?

A. The attempt to establish a central line.

Q. Any others?

A. No.

Q. And all of these, IO, intramuscular, central line, is it accurate to say that they're all things you began to investigate, consider, evaluate post-Joe Clark in 2006?

A. Yes.

Q. And it was Joe Clark's execution and the events of that day that prompted that evaluation investigation?

Page 54

A. Yes.
Q. How long after Clark would you say, Mr. Voorhies, you first began taking a look at these issues of alternative delivery?
A. My personal exploration probably began the Saturday following the Clark execution.
Q. And did it ever expand beyond just your own personal investigation? In other words, become say a more formal process?
A. Yes.
Q. Or Department, kind of done in the auspices of the Department in your job here at the -- for the State of Ohio?
A. Yes.
Q. And when did that -- would you say that sort of first began?
A. In that whole analysis period where the director had to respond to the Governor, for lack of a better phrase, in that after-action review period of what went wrong, what are we going to do to fix it.
Q. So that would have been when Governor Taft was governor.
A. That's correct.

Page 55

Q. Dealing with the issue of Joe Clark, let's figure out what happened here and see if we can do better.
A. That's correct.
Q. Since September 15th -- maybe that's not the way to ask it.
Other than these alternatives, interosseous, intramuscular, central line, have you at any point considered any other methods of delivery?
A. No.
Q. Other than I guess the current method.
A. No.
Q. Which is the peripheral IV vein access.
A. That's correct.
Q. Since Rommel Broom on September 15 have you considered or heard that consideration is being given to, whether by you or by somebody else within the Department, of any other methods of delivery other than central line, intramuscular, interosseous, or the current method?
A. No.
Q. So we've sort of identified the universe of potential delivery methods.

Page 56

A. And you're already talking much more intelligently about this. You sound very impressive.
Q. Well, thank you.
So let's talk then about intramuscular. That's getting a shot in the butt or in the arm.
A. Correct.
Q. What did you learn about that method in your research and investigation?
A. That it's slower but that there are drugs that can be delivered through an intramuscular injection, which although they may have a slightly slower absorption rate, could conceivably achieve the same result in a reasonably quick period of time.
Q. Any data you've heard or learned in terms of how quick a period of time we're talking about here? Is that within the half hour or longer?
A. Again, very generalized, yes, within that half hour time frame.
MR. PORTER: I'm sorry, I didn't hear your answer.
THE WITNESS: Within that half hour time.
Q. And when we say slower absorption, I suppose there's probably a hierarchy or kind of a ranking of what's the quickest versus kind of going

Page 57

down.
Here's what I think and maybe I'm wrong, but would central line be the quickest?
A. Yes, well, actually central line actually parallels IO in terms of absorption rates. At least that's the claims of the IO folks.
Q. So they're comparable, IO and central line to your understanding would be -- would provide for the quickest absorption rate.
A. That's correct.
Q. Is the current method peripheral vein IV access, would that be second?
A. Yes.
Q. And then would intramuscular be third?
A. Yes.
Q. And obviously we know the time frame for, well, I mean we know the time frame for peripheral vein IV access insofar as the three drug protocol is concerned.
Generally speaking when things are working properly and you've got both lines established from the moment in time when the drugs begin to be administered in the Equipment Room to the man sitting on the table, we're generally talking

Page 58

ten, 15 minutes before a cause of death or death is announced I think.
A. That's correct. That would be an accurate average.
Q. Sometimes even less time, correct?
A. That's correct.
Q. Fifteen minutes I think if I'm recalling the data, is kind of on the outer edge. I think Newton took 14 minutes and that was relatively long.
A. That's correct.
Q. That's been the history anyway, ten to 15 minutes with respect to virtually everybody who's been executed in this state; is that right?
A. That's correct.
Q. To this point.
And that's always been with peripheral vein IV access, correct?
A. Correct.
Q. And that's always been with the three drugs.
A. Correct.
Q. Now with respect to administration of a single drug massive dose of sodium thiopental or Hydromorphone, your testimony is there really isn't

Page 59

at this point data that you're comfortable -- data that you have any degree of knowledge about as to how long it would take if those drugs were used solely.
Maybe that question wasn't --
A. You lost me there. Because I would say the contrary. There is very significant data on a single massive dose of sodium thiopental.
Q. In terms of how long it would take?
A. No.
Q. That's what I'm talking.
A. But the --
Q. It would reliably cause death, we've heard that.
A. Yes.
Q. That I think --
A. The pharmacokinetic testimony of Dershowitz which is that if death has not been achieved in five minutes, assess, administer another 5 gram bolus.
In my logic that's keeping it in the same time frame if he's saying, endorsing the fact even after five minutes of that you could go assess and determine the need for a second dose or not.
Q. And that would be, that analysis that

Page 60

he's performed that is in that testimony, is that with peripheral IV access?
A. Yes.
Q. So it might even be faster if you're doing central line or IO.
A. That's correct.
Q. Then with respect to Hydromorphone in terms of the time you'd have a reliable determination of a death, am I correct in understanding that that data has not been provided by Dr. Dershowitz yet?
A. That's correct.
Q. But your best understanding is that you're going to be within something less than a half hour.
A. Yes.
Q. And that would be true whether it's done interosseously via a central line or via peripheral vein IV access; is that true or not?
A. Yes, but you didn't include intramuscular.
Q. Or intramuscular, you're right. Is that true?
A. Yes.
Q. But intramuscular would be the slowest.

Page 61

A. That's my understanding.
Q. So intramuscular then is a shot in the arm or the butt.
Has there been consideration being given at all in connection with this review and analysis as to where the shot would be if it was used in the execution of inmates?
A. Yes. In the upper shoulder.
Q. So in that instance when it's an intramuscular injection, am I correct in understanding that really all you need to do is hit the muscle?
A. All you got to do is break the skin, get into the muscle.
Q. And then insert the drug.
A. Correct.
Q. Sort of like what we all recall when we were kids and had to get shots.
A. Yes.
Q. And that would be done where? Right there in the Death Chamber if it was used? Is that your thinking?
A. Those discussions are ongoing but, yes, that's at least preliminarily what's being

Page 62

considered.

Q. And it would be as you understand it you're talking about a single shot of the Hydromorphone or sodium thiopental.

A. Yes. But there's been no discussion of an intramuscular injection of thiopental.

Q. But there has been discussion about Hydromorphone.

A. That's correct.

Q. It's water soluble, there's no pH issue there.

A. It's not the pH issue going intramuscular, it's the volume.

Q. What would the volume be, a large volume?

A. Well, if you could concentrate it further, but intramuscular injections typically because of -- because you're talking about a volume going into the tissue, they try to keep them at 5 mls or less. For any intramuscular injection.

Q. 5 mls, milliliters per liter? Is that what that means?

A. That I don't know. I just know the standard is 5 mls or less is the standard for an intramuscular injection.

Page 63

Q. Is it your understanding that if intramuscularly a dose of Hydromorphone were to be administered a dose sufficient to cause death, which I think you might have said and I know you may have this, may just be your best recollection, but 150 milligrams per 1 milliliter dose.

A. Per 5 ml.

Q. 150 milligrams per 5 ml?

A. Yes.

Q. If that dosage were to be used intramuscularly, I think your testimony was that is your understanding of what would be sufficient to cause death, correct?

A. Yes. But I'm not seeing that definitive research but that is being discussed.

Q. Is it your understanding that could be done in one shot?

A. Yes.

Q. Or would you need two or three?

A. It's my understanding that it would be done in one shot. But having not seen the final research, I'm again trying to be a logical guy with if Dershowitz says if you went to a single drug protocol, he says give them 5 grams of thiopental,

Page 64

wait five minutes, give them 5 more if they're not dead.

It wouldn't surprise me for a similar scenario to unfold if he said give them 5, give them the 150 milligrams per 5 ml, wait five minutes, 10 minutes, assess and deliver a second dose. I don't know. I can't --

Q. I understand that maybe you need to administer a second dose if it doesn't have the effect on everybody that you would expect the large dose to have on most people.

A. Right.

Q. But in terms of the thinking here, the thinking at least as you understand it at this point is it could be done with most people anyway with one shot.

A. Yes.

Q. And it would be in the arm and I guess that would have to be administered right there in the Death Chamber.

A. Yes.

Q. Would it have to be done by a physician? Or a nurse?

A. No. No. Our existing medical personnel

Page 65

could administer shots.

Q. Have you done any research on intramuscular or been provided any research on intermuscular delivery?

A. Yes, I've done the research. No, I've not been provided with anything.

Q. What research have you done? Is it the same stuff we're talking about?

A. Same stuff. Getting online, looking at standard protocols for intramuscular injections. That's how I came to the figure they try to stay at a 5 ml dose or lower so you're not injecting a volume into the tissue.

Q. Have you consulted with anybody like you did with the interosseous, you said you talked to some paramedics. Have you done that similar type of thing with respect to the intramuscular?

A. No.

Q. So your research and analysis and investigation has been confined at least with respect to that method of delivery to Internet research, that type of thing.

A. Correct.

Q. Have you provided the results of that

Page 66

research to anybody else on the team, so to speak?
A. No.
Q. So this is really then just your kind of personal getting yourself knowledgeable about that particular method.
A. That's correct.
Q. And your understanding is Dr. Dershowitz has actually evaluated that and going to provide data.
A. That's correct.
Q. Pain issues with respect to intramuscular, are there any that you've identified in your research?
A. Only pain associated with any needle going through your skin.
Q. What about your understanding as to what course of that kind of dosage would be if you got a massive sufficient-to-cause-death dose of Hydromorphone, how would you, at least based on what you know so far, how would that progress? Would the individual fall asleep, what happens?
A. Yeah, that's my understanding is that the, as I stated earlier, hydrocodone in this dosage would be a highly concentrated opiate so there's no

Page 67

pain associated with it.
If anything the onset would be a euphoric sensation quickly followed by lack of consciousness.
Q. Have you -- based on what you've done, have you identified other areas where Hydromorphone is used? What's it used for?
A. It's typically used for end-of-life pain management.
Q. For people with cancer, that kind of thing?
A. Cancer and it's because it's so strong, it ends up being the drug of choice for people who have been on a sustained regimen of pain management where opiates build up in your system in your fat tissues so you build a tolerance and they literally have to increase dosages to get the desired pain management effect.
In the hospital setting Hydromorphone is the one that can be delivered in very small doses and very higher concentrations and defeat that tolerance buildup to opiates.
Q. The "morphone" word, is it a derivative of morphine?
A. Correct.

Page 68

Q. So it's in the family of morphine?
A. Yes.
Q. I guess they're all opiates.
A. They're all opiates. The morphone is a more concentrated version of the same chemical compound.
Q. Is it a schedule 1?
A. Schedule 2 drug I believe.
Q. So it's an illegal drug so to speak?
A. Correct, it would be considered a drug of abuse.
Q. Do you know if any other states have used Hydromorphone in connection with lethal injection?
A. Don't know of any.
Q. Are you aware of any states that have considered it?
A. Don't know of any.
Q. Have you in connection with your research consulted with or discussed with any other people in corrections departments in other states about this issue concerning Hydromorphone or any of these other alternative delivery devices?
A. None.
Q. Do you know whether Hydromorphone -- I've

Page 69

heard there's euthanasia I think in Europe. Do you know if it's used for that too or not?
A. No. Oregon uses an orally administered ultra-fast-acting barbiturate. I believe it's pentobarbital.
Q. This will display my knowledge, but is a barbiturate different than an opiate?
A. Yes.
Q. What is your understanding of the difference?
A. Pentobarbital I believe is not an opiate. And I really couldn't distinguish further than that.
Q. What's sodium thiopental, is that a barbiturate?
A. Yes. That's shorter term.
Q. Fast-acting?
A. It's fast-acting but it's not ultra-fast-acting as compared to sodium pentathol.
Q. Anything else about intramuscular that you can recall or that you considered?
A. No.
Q. Let's talk if we could for a minute about central lines. What have you done in connection with that issue in terms of your research and

Page 70

investigation?
A. Just explored what's required to be able to do them. It's not one that I've spent a lot of time on just because of the involvement of a physician to do that and the reluctance of the director and myself and everything involved to try to look at a method of delivery that would require that.
Q. And obviously I think we've had some testimony about central lines, that would include, for example, the vein in the groin?
A. The femoral artery.
Q. The femoral artery in the groin; is that correct?
A. That's correct.
Q. That's one possibility.
A. Subclavian, and the interior jugular.
Q. Are those three different possible locations that we've identified or just two?
A. There's three; femoral artery, subclavian, and interior jugular.
Q. And the interior jugular, is that the neck?
A. Yes.
Q. Is it your understanding then that in

Page 71

order to do a central line procedure you would need somebody who is a physician?
A. Well, yes and no. There are ports that can be established without doing it. If you're going to do a cutdown to do the femoral artery you need a physician.
But there are combat medics that establish femoral artery lines with a port that doesn't require a cutdown and can be achieved with appropriate training.
Q. But at this time I take it that people on the medical team, currently on the medical team do not have the training to do these central lines procedures?
A. That's correct.
Q. Do you have a preference as you sit here now for any of these alternatives we've discussed as to what you were hoping to see done?
A. No preference.
Q. But just so we're clear, have we identified all the alternatives that are sort of on the table, so to speak?
A. Yes.
Q. At least as we sit here now.

Page 72

A. Yes.
Q. And has the director given any guidance or direction as to what he wants, what he's looking for?
A. Absolutely. If anything he's been clear that our efforts are to stay broad and open-minded to the type of drug used whether it's single or multiple, and the method of delivery. He wants to be fully informed about what are the best options.
Q. And that's the process that's going on right now.
A. That's correct.
Q. It's not complete; is that correct?
A. That's correct.
Q. Do you have a time frame in mind as to when it will be complete? At least complete in the sense that we're ready to make a presentation to the director?
A. Yeah, we're continuing to formulate that, but I recall a discussion we'd like to have something ready to formalize by the end of November.
Q. Is that --
MR. PORTER: I didn't hear your last two words.

Page 73

THE WITNESS: The end of November.
Q. And by that what do you mean; by the end of November the goal is to have something to be able to present to the director to have him make a yes or no?
A. No. I believe the director will be receiving information prior to that. I think that time frame is the beginning of the window where we could have policy, recommended policy changes drafted and at least then disseminated, however that decision goes in terms of how they're going to be disseminated.
Would there be -- obviously there's going to be a need to submit them to the court, to the Attorney General's Office, to the Governor's Office, those types of things.
Q. And is it your testimony at least as of this point in time, October 6, that the goal to have those -- all those things done and ready to be submitted is the end of November? Or am I misunderstanding what you're saying?
A. No, that's a general time frame, but I've also not heard the director be specific about that. He was asking me to characterize it and that's the

time frame I believe we're looking at.
Q. No, I understand.
A. He's not established any deadlines.
Q. Has anyone began drafting policy changes to your knowledge?
A. No.
Q. So it's not even into that phase yet.
A. No, we're in the research phase.
Q. Still in the research phase, still gathering information.
A. Yes.
MR. SWEENEY: Let's take a quick break.
(Off the record.)
MR. SWEENEY: Thanks for the break, guys.
Q. We were talking about some of these I guess what would be called a proposed, not even proposed changes, just things you're considering, the Department's considering as to possible changes that might be made to the protocol; is that correct?
A. Yes. Either in the type of drug or method of delivery. That would be the way I would characterize it.
Q. Anything else, any other changes that you can -- that are being evaluated or considered other

than the things we've discussed?
A. Nothing that we've not discussed.
Q. And am I correct in understanding that the directive, quote/unquote -- well, maybe I should back up.
The fact that this process is going on that you've got I guess Dr. Dershowitz engaged in taking a look at some of these things, you've been doing it it sounds like in earnest at least recently, correct?
A. Yes.
Q. And are others involved besides yourself and Dr. Dershowitz?
A. Yes.
Q. Who would you say in terms of having some substantial involvement would you list among the people that are --
A. Myself and the chief counselor, Mr. Trout.
Q. And then Dr. Dershowitz would be the third person?
A. Yes.
Q. In terms of people that work for the Department, you've identified the people who are most

involved; is that correct?
A. Yes.
Q. Is this effort that's being undertaken by yourself, Mr. Trout, and the outside expert, something that's being done at the request of the director?
A. Yes.
Q. And was that request of the director made following Mr. Broom's attempted execution on September 15?
A. Yes.
Q. You testified a little bit before the break about sort of the timeline that you understand the process to be operating under. Do you recall that?
A. Yes.
Q. Roughly you're hoping to have something ready by the end of November; is that correct?
A. Yes.
Q. You understand I imagine that there's a trial in this case, Cooey versus Strickland case pending before Judge Frost I think scheduled for November 2.
Do you have any -- is it your testimony,

Mr. Voorhies, that in terms of these things we're talking about are there going to be any changes, and if so what they are, that none of that will be resolved by November 2?
A. I would not be prepared to make that declaration.
Q. It sounds like your understanding or at least a minute ago you were thinking probably the end of November.
A. Again, I threw that out there as a rough estimate. But if Dr. Dershowitz called today and said I finished my pharmacology/pharmacokinetics analysis, here it is, here's what I think you can do, the window could close faster.
Q. Understood. But I'm just trying to get a sense from you because you're the witness here today what your best judgment is.
We show up for trial on November 2, which is less than a month, I mean it's probably four weeks from today, four weeks from yesterday I imagine November 2 is when we start this trial.
Do you have -- what's your best judgment as to the status of this project at that time?
A. That it would not be finalized yet.

Page 78

Q. Fair enough. You obviously could be I suppose.
A. That's right.
Q. But as you sit here today your best judgment is that you're looking more at the end of November?
A. That's correct.
Q. What will the process be now, if you could help us with that, once you get Dr. Dershowitz's opinions and reports what is your understanding as to what will happen next?
A. We will then start the process of educating the director on those issues of the drugs, types of drugs, single drug, combination of drugs, same drugs, method of delivery, what's primary, what's secondary, is there going to be a tertiary method of delivery.
That whole spectrum would then be presented to the director in consultation with counsel based upon the research findings. We'd have to -- I mean there's -- I guess I could go on.
But that would then result in a decision being made about what if any changes would result in our execution policy.

Page 79

Q. And that was going to be my question. I mean what is involved in, as you see it, in this process of educating the director? What types of things would happen?
A. Well, he's a smart guy, he's going to want to see the evidence that we're relying upon for whatever recommendation it is that we take to him, or recommendations.
And then I'm sure he's going to end up asking many of the same questions you've asked today about efficacy and speed and side effects and all those things.
And then ultimately when we've satisfied his questions, a decision's going to be made about drugs, types of drugs, and methods of delivery.
Q. Is it your understanding that once the process is ready to make to begin, the process of educating the director in the manner you've described, is it your intention or belief that recommendations will in fact be presented of some sort? Is that sort of the process?
A. Yes.
Q. So will these be in writing? Will they be orally?

Page 80

A. Probably both. There will be stuff in writing, there will be just oral presentation of the information we're sharing with him.
Q. Who will this recommendation come from? Will it come from you? What's your understanding of the process?
A. I'm certain I'll be involved in it. The chief counsel will be involved in it. May even have other legal counsel involved.
If there are other components that come up, let's say a particular method did require some extra training on the part of the medical team members, there's going to be that component that would need to be factored into the whole process.
Q. I guess I'm just trying to get a sense though that if, for example, there's going to be a memo let's say, do you think this would be a memo to the director of some sort or not?
A. No.
Q. Set up a meeting with the director?
A. Yes.
Q. In advance there would be some materials provided for him to review that might set out the recommendations?

Page 81

A. And we could even be -- typically doesn't go that way but you could even see a draft policy presented to him of if this is our primary method, here's the policy language. If this particular method's going to be the secondary, here's the policy language that supports that.
Q. That's what I'm trying to get a sense of as to how that process goes.
Will it be some sort of memo or some sort of written materials that he'll then evaluate and then meet with you guys?
A. The research materials I'm sure will all be in writing in some form or fashion. This is going to be the ultimate end document.
Q. "This" meaning the policy.
A. The policy, I'm sorry.
Q. The written policy.
A. Yes.
Q. So you're envisioning that at least perhaps as part of whatever presentation is made to the director for consideration by him, it may very well include a policy revised, drafted, ready to go for him to review.
A. That's normal practice for any policy

Page 82

that we change. We have a template that we use that inserts "draft" across it so it can't be misconstrued.

Q. Has there been one person sort of charged with the responsibility for this process we're talking about of gathering this information and making this presentation to the director and getting him in position where he can make a decision?

A. No. The chief legal counsel I would say is heading that up. But I've been actively involved in the majority of those discussions with him.

Q. Has there been given any consideration to inviting public comment on whatever is proposed or whatever is being evaluated once it gets to the point of decision making?

A. That issue was discussed.

Q. And by whom?

A. Chief legal counsel, myself, and the director at that point.

Q. Has there been a determination made as to what will be done?

A. No.

Q. Has that been rejected?

A. No.

Page 83

Q. So is that still a possibility, that you may seek public comment on what is being proposed?

A. Yes, that's accurate.

Q. How would that happen? I mean have you -- do you have any idea in terms of mechanism or the procedure that something like that would be handled by --

A. No.

Q. In your experience with the Department -- you've been here how many years have you worked for the Department?

A. Fifteen and a half.

Q. Fifteen and a half?

A. Little over 15 and a half years.

Q. With your experience with the Department have you ever had an occasion where public comment was sought on any aspect of decision making that you've been involved in?

A. No.

Q. So if there is public comment invited or sought in connection with this issue that we're talking about in these proposed changes that are being evaluated and considered, that would be something new to you.

Page 84

A. That would be something very new to me.

Q. Has anyone explained to you how that might work?

A. Well, no. My knowledge of how it's occurred in relation to this subject is predicated on what's occurred in other states. But nothing has been discussed about what we would do here in Ohio.

Q. And other states would be, for example?

A. Florida, Tennessee.

Q. What happened in those states?

A. They had to -- they actually impaneled a commission or a committee.

Q. With people from different perhaps different constituencies, different interests in the process?

A. Correct. And I believe in Florida they literally opened it up.

Q. So that's being considered I hear you say.

A. I didn't say that.

Q. Okay.

A. I said that's how I've seen the public option manifest itself in other states.

Q. The public involvement.

Page 85

A. Yes.

Q. But in terms of Ohio and the process you're going through now with respect to Ohio's protocol and the changes that are being considered and evaluated, I thought I heard you say that one thing that you've discussed is perhaps involving or engaging some public comment, inviting public comment in connection with this issue; is that correct or not?

A. Yes, but it was in the context of a different discussion about whether or not to impanel such a commission as other states have.

Q. Is that -- has there been a decision made on whether or not to impanel a commission?

A. We're proceeding as if we're not going to impanel a commission.

Q. And why?

A. Above my pay grade.

Q. Did somebody make that determination; let's proceed as if we're not going to impanel a commission?

A. Correct.

Q. Do you know who made that determination?

A. No, I do not.

Page 86

Q. Do you know if the director did?
A. I cannot make that determination. I assume that he had some role in that decision-making process.
Q. Do you know if the Governor was involved in that decision-making process?
A. That I don't know.
Q. What have you heard with respect to that issue? What have you been told? We're not going to do it or let's assume we're not going to do it, we may do it?
A. The predicate for the approach we're taking is the existing Revised Code that says the Department of Rehabilitation and Corrections will carry out executions utilizing lethal injection by drug or combination of drugs, and it leaves the method of delivery, the choice of those drugs to the Department of Corrections.
Q. Something --
A. Nothing in the Revised Code says anything about intravenous injections.
Q. Right. Nothing in the code says anything about the specific method.
A. That's correct.

Page 87

Q. Is that your read of it anyway?
A. Yes.
Q. The code speaks in terms of drug or combination of drugs being injected into the inmate in some way.
A. That's correct.
Q. But with respect to the issue of public comment, is there anything in the code that addresses that or requires that?
A. Not to my knowledge.
Q. So as we sit here today, and all I can do is ask your understanding, is it your understanding that the issue of involving a public commission or seeking public comments before making any decisions on this issue that we're discussing, in other words, changing protocol, revising it, doing things differently than they're being done now, that that issue is -- has been decided adverse to involving the public or seeking public comment? Is that correct or not?
A. No. I just my understanding of the approach is we're proceeding as if we have the authority to develop the protocol. If there's to be a change. And how or if there's public comment on that before something is enacted is yet to be determined.

Page 88

Q. And it's the determination of whether public comment will be invited or whether a public commission will be involved is a decision that resides with somebody else, not you.
A. That's correct.
Q. And I guess you're saying that no final decision has been made on that.
A. That's my understanding.
Q. Fair enough.
Let's talk if we could about September 15th and the execution, the attempted execution of Romell Broom.
A. Okay.
Q. Were you present at SOCF for the Broom execution that was scheduled for the 15th?
A. Yes.
Q. What was your role to be that day?
A. South Regional director.
Q. Which meant what in terms of what your -- just sort of give me -- let's do it this way, what time did you get to the prison that day?
A. I want to say I got there about 7:30, 7:45. Not certain.

Page 89

Q. Were you there at all on the day before the execution?
A. No.
Q. I think I asked this before but my recollection of your testimony, correct me if I'm wrong, is that you participated, attended none of the training sessions for Mr. Broom; is that correct?
A. That's correct. And if I can, let me clarify. I got to Lucasville, for Broom I got to Lucasville the night before.
Q. The evening of the 14th?
A. Yes.
Q. Did you stay at the Holiday Inn Express?
A. No, I did not.
Q. That's sort of a running joke.
A. I stayed with a friend out of frugal responsibility. I saved the state 50 bucks.
MR. BOHNERT: As a taxpayer I appreciate that.
Q. You came in the evening before?
A. Yes.
Q. Did you come in by yourself?
A. Yes.

Page 90

Q. Do you now work here in Columbus?
A. Yes.
Q. As your current duties?
A. Yes.
Q. Did you have to move?
A. No.
Q. Because you as I recall you resided in Noble County?
A. Yes.
Q. Is it Noble?
A. Yes.
Q. How far is that from Columbus?
A. From my house to the office is right at 90 miles.
Q. So you got to do 180 miles a day.
A. (Nods head.)
Time to contemplate.
Q. I guess so.
So you arrive at 7:35 in the morning. Where do you go first or where did you go first on that day?
A. The warden's office.
Q. And we've been to that complex, so you went to that area where the warden's office is. And

Page 91

what did you do?
A. Correct. Just checked in and went to the command post. Reviewed the timeline.
Q. Command post is right there.
A. The big training room down at the other end of the hall from the warden's office.
Q. So that was the command post that day. And the incident commander for that day, do you recall who that was going to be?
A. Donald Morgan.
Q. Who's the, what is it, assistant warden?
A. Deputy IC was Shawn Taylor.
Q. I'm sorry, say that again.
A. Shawn Taylor.
Q. So Donald Morgan.
A. He's a deputy warden by title but you asked who the incident commander was. He was performing the function of the incident commander.
Q. Mr. Morgan was that day.
A. Yes.
Q. And Shawn Taylor?
A. He was deputy IC.
Q. So there's an IC and a deputy IC for every execution?

Page 92

A. Correct.
Q. What's Mr. Taylor's role at the SOCF?
A. He is an administrator over the food service operation.
Q. And what does the deputy IC do on an execution date?
A. Well, technically they have all the same responsibilities as the IC. We've just always employed an IC and a deputy IC because very often things are happening simultaneously and you've got two administrators there that have authority to make decisions on what happens when and where.
Q. Do the two ICs, deputy and the IC, do they both, are they stationed throughout the process there at the Command Center?
A. Yes.
Q. So their role is really just to stay there?
A. Stay there, stay abreast of all of the issues going on with the process prior to and leading up to and during.
Q. So at the time you would arrive at 7:35 on the morning on the 15th of September a timeline would have already been started, correct?

Page 93

A. Correct.
Q. Would have been well into its generation because it begins the day, really the moment the inmate arrives at the institution.
A. That's correct.
Q. And your understanding I'm sure is the same as mine is that Mr. Broom arrived sometime on the 14th from OSP and arrived at Lucasville sometime on the 14th of September.
A. That's correct.
Q. Do you have a recollection of approximately when he got there?
A. No. But I can tell you that our target time is always to have them there by 10:00 o'clock the day before.
Q. 10:00 o'clock in the morning.
A. Yes. The timeline would reflect that. It's usually somewhere between 9:30 and 10:00.
Q. I think the timeline shows, take a look at that.
MR. SWEENEY: Chuck, do you have that by chance so the witness can refer to it? I think it's RB311, which is the first page of the actual timeline but it's backwards or goes in reverse order so it

would be the last page of the document. It's part of Depo Exhibit 76 which is that binder of Broom exhibits that were produced by the Department.
Q. So it looks like timeline began about 8:49 in the morning on the 14th. Do you see that?
A. Yes.
Q. It appears Mr. Broom arrived, according to the timeline anyway, about 9:45 roughly that morning.
A. Correct.
Q. And these timeline entries, are you comfortable that they are accurate? I mean is this, is that your expectation anyway?
A. Yes.
Q. That they're going to accurately reflect the approximate time of the various events depicted in the timeline.
A. Yes.
Q. So you arrive in the morning before 8:00, go to the Command Center. Did you do anything in particular that you can recall?
A. Reviewed the timeline that existed at that point. Talked to the warden, the director. Ms. Walburn was already there. And went as I said

went to the command post, talked to the ICs.
Q. In connection with your review of the timeline are you looking -- is it your practice, are you looking for anything in particular? What's the purpose for your review?
A. Looking for anything out of the ordinary, that did anything transpire overnight that may factor into the day.
In Broom's case we had a late filing of an appeal I believe. So that was news to me coming in that there had been a late filing of the appeal. Those sort of things are -- even things with his visit -- he didn't have any visitors but under normal course you would look did he have any problems with his visits the night before. Did he call a family member and get all upset at 2:00 in the morning. Those types of things.
Q. Anything in connection with your review of the timeline, any part of your purpose for that review to determine whether there might be any potential issues with his veins or arms or anything?
A. I don't look at the timeline to determine that. I typically talk directly to the IC and ask him how the vein checks went. Because they do them

the day before and again the morning of.
Q. Did you do that on this occasion?
A. Yes.
Q. And tell me what -- who you went to first of all. Who did you discuss that with? Did you discuss that with Mr. Morgan?
A. Mr. Morgan I believe first and the recorder that was in the room, just did they do the vein checks and what did they find.
Q. And what did you learn?
A. That they thought veins were visible -- forgive me, don't recall. I thought they said they had visible veins on the right side but not on the left. Might have been the other way around, but.
Q. Would you expect that kind of thing to be in the timeline in any event? Whatever you learned, would it be your expectation that would also be reflected in the timeline?
A. Actually, no. Where I expect it to be documented is in the medical file.
Q. Do you --
A. In the timeline there should be some entry about the medical team going into the cell, assessing, doing something like that but the outcome

of that exam, no, I didn't. I don't expect that.
Q. But in any event, you recall discussing the results of the vein assessment with the IC that morning; is that correct?
A. Yes.
Q. And you learned I guess as a result of that there were visible veins in one arm, maybe not as visible in the other; is that your testimony?
A. Yes.
Q. Did you draw any conclusion with that or did that cause you any concern?
A. No, I didn't draw any conclusion. I think I asked a follow-up question of did the medical team think we were going to be okay, to which they responded affirmatively.
Q. Is that the kind of thing that you've seen happen before where you have veins may be visible in one arm and not the other, that kind of a thing?
A. Yes. Not unusual.
Q. So that's not alarming or unusual; is that correct?
A. That's correct.
Q. So was it your assessment after you did

Page 98

your kind of initial review of the scene and spoke to the ICs and perhaps reviewed the timeline that this was going to be a routine in the sense that that -- I know that's a tough word to use in this context, but that this was going to be an execution that would proceed roughly according to plan.
A. Yes.
Q. You didn't anticipate there would be any problems with the veins or with getting IV access.
A. No.
Q. What was your next -- what did you do next in terms of your day? I just want to get your day.
A. I spent the morning kind of floating back between the warden's office and the incident command post. Then we were -- we knew we were going to be or more than likely going to be in a holding pattern, that the execution would not proceed at its normal time.
So I was back and forth between the warden's office and the command post interacting with the IC, the warden, director, assistant director, chief legal -- well, chief legal wasn't there. Legal counsel for the Department. And Ms. Walburn.

Page 99

MR. PORTER: And who?
A. Ms. Walburn.
Q. Chief legal is Mr. Trout, correct?
A. Correct.
Q. On that day we had Mr. Stout?
A. That's correct.
Q. Mr. Stout was filling in for Mr. Trout, correct?
A. Correct.
Q. In terms of these people you identified chief I guess would be Mr. Stout, the director, Ms. Walburn, the ICs, the warden. Are those folks right there in that Command Center, the warden office area?
A. Yes.
Q. So you're all basically in the same physical location.
A. Correct.
Q. And we've obviously observed that because we spent the last week spending three days in that facility and so we're familiar with the layout.
So when you're there or when you were there on the 15th for Mr. Broom's execution do you get an office to work out of? Because you have a lot

Page 100

of time I guess that day where you have downtime.
A. Yeah, I can. I didn't need to there. I've got a Blackberry so I review e-mails and I think I made some calls back to Central Office. But I usually just use the Blackberry.
Q. Where were you physically located?
A. At the table that protrudes from the front of the warden's desk. There's like four chairs and a little table that connects to the front of his desk.
Q. So you were actually stationed in the warden's office.
A. When I was in there, yes.
Q. And then I do remember that this was that period of time when the appeals were being considered. This was by the Sixth Circuit, is that your understanding?
A. Correct.
Q. Sort of whether to go on or not was the actual issue.
A. Right.
Q. Do you have a recollection as to when that resolved itself and the process was decided that the process would be a go?

Page 101

A. I want to say that it was around 11:30. Somebody got a call that there might be a decision early afternoon and there was nothing definitive about that.
So we began then, part of my role then is to start working between the warden and the director to start talking about okay, what are we going to do if the announcement comes out at 12:30, what time is going to be the startup time.
We got visitors that need briefed, we got media that needs briefed, and we start discussing all those logistical issues.
Q. Where are the media people during this time frame? Where were they physically stationed?
A. They are in -- the prison proper has a visiting room that we convert into the media center for the operation.
Q. So all of the media are there or just the media who will be serving as witnesses?
A. No, all the media are there. They have laptops and all that stuff.
Q. Do you have a recollection as to how many media people were there that day?
A. It would only be an estimate. I went in

when the director briefed the media. I want to say looked like there was maybe eight or ten tops different reporters there, but a couple of them were by themselves, some of them have a cameraman.
Q. They can have cameras in this visiting room?
A. In the media center, yes.
Q. And then there were witnesses I guess for the victim's family; is that correct?
A. Yes.
Q. Where are they stationed, so to speak?
A. You're familiar with where they staged you guys. If you're in the attorney room with the family witnesses, the inmate's family.
Where you walk out that hallway and then exit the exterior door to go across the yard, if you continue past that door which now the Control Center's on your left, there's another crash gate just on the other side of the Control Center, they open that crash gate and there is actually our Parole Board room is converted into the room for the surviving victim witnesses.
Q. Were you in that room at all that day?
A. Yes. I go in when the director goes in

typically about a half hour prior to the execution start time. So if it's a 10:00 o'clock, somewhere between 9:20, 9:30 the director will go over and talk to the surviving victim witnesses and from there come out and across the yard to go over to the Death House.
Q. Is that the practice, is that something that's done as a matter of routine for every execution, that the director will actually meet with the representatives of the witnesses for the victim's family?
A. Yes.
Q. And that takes place roughly a half hour before the process is to begin?
A. Roughly, yes.
Q. And does he say something? What happens in those meetings?
A. He talks to them.
Q. Were you there on the day of the Broom execution when the director talked to the family?
A. Yes.
Q. Do you remember what was said?
A. Wouldn't be able to quote him. It was general comments of I think he started by talking

about understanding that it had been a longer day than they expected at that point.
And that he then explained to them, which they had already received word, but he then explained to them that the legal issues had been resolved, and then talked to them about hoping that his staff, the Victim Services folks had taken care of them.
They had several complimentary comments about how staff had catered to them, gotten them through to this point. And he concluded his comments in a very generalized nature and we left.
Q. Anything said about Mr. Broom to the victim's family?
A. No.
Q. What about if there are witnesses for the inmate, where do they get stationed on this day?
A. In the room if you -- they're in the room on the other side of the Control Center.
Q. But they're all sort of in that main complex and everyone will have to be escorted across to the Death House when the process begins.
A. That's correct.
Q. Does the director in your experience speak to the members of the inmate's family before,

or the inmate's witnesses before execution?
A. Not in my experience.
Q. Does anyone?
A. I can't speak for anyone currently. I did on occasion when I was the warden. And I did it on a case-by-case basis based upon my sense of the inmate's family or friends, whomever it was.
I didn't just insert myself into that. I would stop by like the night before if they had -- if he was getting visits from family or friends the night before.
Typically try to stop by and if I got a sense that they were kind of receptive to even seeing me. I've dealt with ones that to use your quote, looked at me like the enemy, and understandably so, so I just kept a distance.
There were others that had specific questions or I had more interaction with them because of visiting issues and ended up talking to them both before and after executions.
Q. During the course of that day and before the process starts is it the practice as you understand it for the Attorney General to actually call the victim's witnesses?

Page 106

A. Yes.
Q. How long has that been the case?
A. For as long as I've been involved. But I know there's been occasions where they didn't call. I don't know if it was because they were out of town or what, but that's been . . .
Q. Have you been present for any of those conversations?
A. No, I haven't.
Q. So you have no knowledge as to what is said?
A. No.
Q. But your understanding is that that does in fact happen, the phone call is placed and received by the victim's family who will be stationed there in the area you've already described.
A. Yes.
Q. Before they go over to the Death House.
A. Correct.
Q. So in this case there was the delay because of the court proceedings and then I think the record shows it was probably about 12:30, 12:45 or thereabouts I think Mr. Broom was informed of the appeals had been denied and there was nothing else.

Page 107

A. Right.
Q. Is that your recollection approximately of the time?
A. Yes.
Q. What was your involvement, what did you do next?
A. We were then actively engaged in the process I described earlier of we've got the word, now when are we going to start up to use the, I guess to put it in context, if we say startup time is going to be 1:30, we're approaching that from the whole management standpoint as if it was 9:00 a.m. on a day it was going to go at 10:00.
That gives us the hour, that gives the director the opportunity to go brief the media, finish our preparation, go brief the media, which can take anywhere -- we leave a window for that because it can take -- we try to limit that since it's prior to the execution, but it can take anywhere from five to ten minutes.
And to do the preparatory briefing and then deal with the surviving victim witnesses and then get over to the Death House.
Q. So that all was done on this day I take

Page 108

it on the 15th of September.
A. Yes.
Q. What time if you can recall roughly was all that completed? In other words, the witness' family over to the Death House --
A. I'd have to refer to the timeline. It was after 1:00. I want to say we got over to the Death House shortly after 1:00 but I'm sure the timeline will reflect that.
Q. Why don't we take a look then. I think it's 305 perhaps I think would be the page number in Exhibit 76.
A. 1:01 the director, Mr. Stout, the warden, the assistant director, and myself at 1:00 p.m. entered the Death House.
Q. I see that. So by that point when you've entered the Death House, am I correct in understanding that the victim's witnesses would have already been brought over? Or not?
A. No, no.
Q. No.
A. No.
Q. But the victim's witnesses will have been met with.

Page 109

A. Yes.
Q. The media will have been briefed.
A. Correct.
Q. And now Command Center's ready to go.
A. Correct.
Q. And you guys being the kind of the top management here with respect to the prisons will then proceed to the Death House and go begin the involvement over there.
A. That's correct.
Q. But then at some point after that the staff will bring over the victim's witnesses and people will get in place according to the normal procedures; is that right?
A. That's correct.
Q. So you get there at 1:00 in the afternoon on 9/15. What do you recall? What did you do?
A. Walked through past the cell and went back and talked with the team members who were stationed in the back part of J1, which would be on the rear of the Death House.
Q. So that's J1 and we've I think had that described for us before as to roughly where that is. But your actions on that day were to arrive and to go

speak with the team members; is that correct?
A. That's correct.
Q. And did you speak with Mr. Broom at all before the process?
A. Not before, no.
Q. So you're back there in J1, what happened next?
A. Talking to the teams, team members. I want to say then I went back into the hallway between the Chamber and the cell, talked to a few of the medical team members for a while.
And then at some point the director and assistant director joined us in the hallway and some further discussion ensued.
Q. Can you recall any of those discussions? What was discussed?
A. To be honest I can't recall who brought the question up, but the question was raised about is the thiopental sodium okay having sat in its prepared form since the preparation time of earlier in the morning.
Q. What happened as a result of those discussions?
A. I got with the one of the medical team

members, we looked at the label on the thiopental bottle that says, I remember seeing something that said it was good for 24 hours or something to that effect.
And we had some discussion about once it's mixed it's probably good for a lot longer than that. And then we went back and discussed it with the director who then said then why take any chances, why don't we just get a new -- properly dispose of that batch and get a new batch over here.
Q. And that was done?
A. That was done.
Q. Anything else you can recall being discussed in these sort of conferences or meetings that were occurring prior to the actual process beginning or reading of the warrant?
A. No.
Q. Any discussions at all that you were part of or heard or participated in at any time prior to a warrant being read on any issues concerning the veins or the arms or anything like that?
A. No. Not more than what I've already testified to.
Q. Fair enough.

So anything else that happened of any -- that you can recall up until the time the warrant was read?
A. Nope.
Q. Were you in that hallway the entire time?
A. No. Once the drugs were prepared it's our practice to get folks in their place prior to the incident commander starting the process and moving the witnesses over.
Q. Okay.
A. Because if you start opening doors and doing all that, it changes the lighting inside the Equipment Room, defeats the one-way mirror that is on the exterior of the Equipment Room.
So we try to get folks in place, doors closed, and minimize movement once we know it's that time to start moving witnesses over and move towards the reading of the warrant.
Q. So at the time the witnesses were brought -- who gives the signal for that? How does that happen?
A. Well, it's predicated upon everybody being in place in the Death House. And then the staff member who's on the direct line with the IC

telling them we're good, we're ready to proceed.
Then the IC is the one who by radio communicates with the media, the victim witnesses, and any inmate witnesses, in that order, to facilitate the escort and make sure they never cross paths.
Q. And then the person who's communicating with the IC on that, is that the person in the Equipment Room?
A. Yes.
Q. Who is that on this case if you remember? I'm not sure if it's a name we're supposed to know or a team number. But who was the -- I would ask for advice on that. Don't want to reveal an identity.
(Off the record.)
A. Captain Miller. Shift captain who performs that role.
Q. So on this day September 15 he was the person in the Equipment Room communicating with the IC about these various topics.
A. That's correct.
Q. So he would have given the go ahead, we're all set here in the Death House, right?
A. Yes.

Q. And that would trigger the IC to, okay, let's get the witnesses and the media and the people over and in place because we're about ready to begin.
A. That's correct.
Q. And as I understand the timeline now, once -- at what point does generation of the timeline entries pass from the little computer terminal that's right outside the holding cell to Captain Miller communicating with the IC and the entries being made at the IC Command Center?
A. At that point when we've started the actual preparation process, then the team members -- the team member who is doing data entry at cell front will stop. Once we start moving visitors, all those entries are coming from the command post.
Q. That's what I thought. I just wanted to know.
So the witnesses and everybody's moved over. Then what happened that day?
A. Death warrant was read. Once that death warrant is completed, the warden comes back to the Equipment Room, the command to turn on the monitors is given.
Nobody moves toward the cell until we

verify the monitors are on and visible from the witness rooms. And then once that has been verified, then the warden gives the okay for the medical team members to enter the cell.
Q. So the only people in the cell prior to the warden giving that okay to the medical members would be Mr. Broom and I guess the four security people; is that correct? Would they have already gone in once the warrant is read?
A. Yeah. Because as that's happening, they're going to -- they're already there at cell front with the door open. The warden is standing behind them for the reading of the warrant.
And as he's going back to verify that the monitors are on, the team members and the team leader are there, just Mr. Broom, it's time to go ahead and lie down on the bed.
Q. So they go in the cell then.
A. That's correct.
Q. So then I think practice is that there's four of them; is that correct?
A. That's correct.
Q. And really three plus the team leader.
A. Correct.

Q. Really two plus the team leader and assistant team leader; correct?
A. Total of four team members, non-medical team members in the cell.
Q. So in this case Team Member 10 is the team leader, correct? The major.
A. Uh-huh.
Q. Right?
A. Yes.
Q. And Team Member 11 is the assistant team leader, correct?
A. Correct.
Q. And then in this instance I believe it was Team Member 16 and Team Member 8 who were the non-medical security people who were in there as well.
A. I would have to refer to the list.
Q. Could you please, Mr. Voorhies, just so we're all on the same page and we're using the right numbers?
A. I'm sorry, what were the numbers again?
Q. 16 and 8.
A. Yes, I think that's accurate.
Q. And then the medical team members on this

day, Team Member 21 and Team Member 9 were the two medical members who were going to be going in the cell to attempt the IV insertions; is that correct?
A. That's correct.
Q. And Team Member 17, his job that day was going to be administer the drugs; is that correct?
A. That's correct.
Q. And that's the entirety of the medical team on that day; is that correct?
A. That's correct.
Q. Where were you physically stationed when the warrant was read?
A. In the Equipment Room.
Q. So you're in the Equipment Room. And the warden goes and reads the warrant.
Does the security team members sort of act like an offensive line? That's sort of what I'm envisioning when you say the warden stands behind these guys.
Is he the quarterback and they're the tackles and the guards?
A. Yes, that analogy would be accurate. But I guess I would want to qualify that. That's done very cordially but they are there if Broom would have

decided, you know, what the heck, they're going to execute me anyhow, I think I'm going to take a shot at the warden.

Q. Has that ever happened?

A. No.

Q. And so when you read the warrant and when the warden reads the warrant to the inmate, does he -- I'm just trying to envision.

You've done that so you know. You've had to do it. I mean does he go and look the guy in the eye and read the warrant or does he stand behind these four guys?

A. No, I've seen Warden Kerns stand in the same place that I do and I literally stood, they always knew that I for what I think are humane reasons I didn't want that perception of I'm standing behind the four henchmen.

They separated, yes, they were in front of me, but I stood closer than you and I are, about from me to Chuck, and looked him in the eye and read the warrant.

Q. So we're talking three feet basically.

A. Yeah. Normal social distance.

Q. Okay. But in terms of reading of the

warrant on this day you would not have observed that I guess because you were in the Equipment Room.

A. That's correct.

Q. Where was the director when the warrant was read by the warden?

A. He was on the telephone.

Q. In the Equipment Room?

A. Yes.

Q. On the telephone with who?

A. The Governor's Office.

Q. How do you know that? How do you remember that he was on the telephone at that time?

A. Because that's protocol.

Q. Is that part -- he'll be actually be --

A. Sometimes he talks to the Governor directly. Most of the time it's to the Governor's staff who are assembled at some place in the Governor's Office.

Q. But this is a phone call to Columbus I guess.

A. Yes.

Q. So the protocol would be then for the director to be on the phone with the Governor or his staff, correct?

A. That's correct.

Q. And that phone call would commence, what, with the reading of the warrant?

A. No, before. To let them know that we're starting.

Q. And then do you know on this day who in particular from the Governor's Office the director was speaking with?

A. No, I do not. At that time I do not.

Q. What about at any time during the day?

A. I know at more than one occasion later it was my understanding there was direct conversation between the director and the Governor.

Q. So you're in the Equipment Room at this time, the director is in the Equipment Room at this time, Warden Kerns is obviously standing in front of the cell reading a warrant.

Team Member 17, is he in the Equipment Room with you guys at this time?

A. Yes.

Q. Where are 9 and 21 at this time?

A. They stand in the hallway between the Equipment Room and the cell until such time as the warden directs them that they're cleared to enter the

cell to start trying to establish the IV lines.

They stand on either side of the hallway with the equipment cart, and then when they get the cue to proceed, they move the cart to cell front and then they go in.

Q. And then the process begins, the warden reads the warrant, he completes the reading of the warrant. The four men, in this case it would have been 10, 11, 16, and 8, go into the room with Mr. Broom, correct?

A. Correct.

Q. The warden at that time directs the two medical team members to go in once the visual has been established?

A. Correct.

Q. And then the process begins; is that correct?

A. The preparation process begins.

Q. But in any event the warrant has been read.

A. Yes.

Q. And now the execution process is beginning, correct? I mean did you disagree?

A. I draw a distinction between the

execution and the preparation process. The execution doesn't begin until we get them in the Chamber and we're starting to administer drugs.

Q. But in terms of the, well, I guess we can argue about what's what, but we agree that at this point the warden has read the warrant telling the inmate we are here with a court order to cause your execution on this date and we will be doing that as soon as I stop reading.

A. That's correct.

Q. And then he sends the people in to begin the process of getting ready for that execution.

A. That's correct.

Q. And at that point there's no turning back, so to speak. In other words, the process has begun.

A. I would disagree.

Q. Okay. In what respect?

A. We turned back on Broom.

Q. Well, right, I know. But our plan once the warrant is read --

A. Yes.

Q. -- is to go until we're done unless something happens that causes you to stop.

A. Unless Supreme Court intervenes or --

Q. Okay. So that's what happened here. Everybody went in the room. Where were you when the medical team members went into the room?

A. Still in the Equipment Room.

Q. Were you observing on the monitor what was happening?

A. Yes.

Q. And tell me what you observed.

A. I observed both of them setting up their equipment. They got little trays that we've got that they mount and insert on the side of the bed. I observed the setup of all the equipment. Observed them attempting to establish IVs at our preferred sites at the elbow on top of the inner part of the elbow.

Seems like I recall -- forgive me, I'm not as familiar with the numbering system as you are.

Q. That's okay.

A. I seem to recall Team Member No. 21 appeared to actually be starting to try to get the IV. He was a little quicker on setup. Team Member 9 wasn't quite as quick just setting up.

I seem to remember him starting to

actually look for IVs first. I recall watching him go through the steps that I'm familiar with and it looked like he got a vein.

I hate to say it in those crude of terms but that's the terms they used. Looked like he got a vein, and I saw him start the manual flush that they do, and I seen him from above, I could tell that he just shook his head like it wasn't -- like the vein collapsed or blew or whatever term you want to use. It just didn't receive the fluids, didn't remain continent.

So then I seen him looking, spent a good deal of time reapplying tourniquet, looking on the top of the hand, looking on the forearm, exploring other potential sites to try to establish IV.

Somewhere in that same time frame I remember seeing Team Member No. 9 do the same thing.

Q. Just let me stop you there if I could please, Mr. Voorhies.

So is it your recollection then Team Member 21 was on the right arm?

A. Yes.

Q. And Team Member 9, the female was on the left arm; is that correct?

A. Yes.

Q. And did you see at all during the time you were watching on the monitor Team Member 21 actually get an IV inserted where the catheter was actually in the arm at that elbow, that antecubital area of the inside elbow, actually doing the drop bag test and handing off the IV bag to be hung up on the hook? Did you see it get that far?

A. That part I don't recall because you can't -- some of that is not in view of the monitor. The monitor doesn't have that broad of a view.

Q. Okay.

A. But, yes, I recall seeing her what I thought was --

Q. I'm talking about 21.

A. I'm sorry, I thought we were talking about 9.

Q. No, 21. So the right arm, did you observe IV access, getting the catheter in, pulling the IV, doing the IV bag drop test?

A. Yes.

Q. Taking the IV bag, handing it to the security guy, going that far.

A. Yes.

Q. You were able to observe all that?
A. Not the actual hanging but that's what it appeared was occurring based on the movement. I could tell. Even though I couldn't physically see it, I've seen it done enough that's what it appeared to be taking place.
Q. So it appeared to be like he had gotten a good IV going.
A. Yes.
Q. And do you know what happened with that particular IV?
A. No, I do not. Other than they didn't have it and they were -- started looking for other sites. So I wasn't there at that time. I'm looking on only getting a piece of it on the monitor.
Q. Understood. But as to your testimony a minute ago about how you saw him shaking his head and looking like he thought he had it but then didn't have it, was it in connection with this same incident we're talking about where the IV bag was handed off and --
A. To my recollection, yes.
Q. So as to what caused that particular IV to fail, you don't have any knowledge of that; is

that correct?
A. No, I do not.
Q. Whether the vein blew or whether the IV was pulled out by the security guy.
A. No.
Q. Your testimony, you don't know which if any of those was the cause of that IV not working.
A. That's correct.
Q. From your perch in the Equipment Room am I correct in understanding you have no audio as to what's happening?
A. That's correct.
Q. This video feed that you're seeing in the Equipment Room, can the Governor see that?
A. No. There are no external video connections anywhere.
Q. So am I correct that the Governor's only able to see what's being generated by the timeline?
A. And when he's on the phone with the director.
Q. Does the director remain on the phone through this whole time?
A. Not necessarily.
Q. Did he on that day?

A. My recollection is he stayed on the front end, yes, but I know there was a time he hung up and then called back at least once.
Q. How long did the process go while you remained in the Equipment Room, if that's the way to ask it?
A. Again I would be estimating. I want to say from the time they started trying to achieve venous access ten minutes, 15 tops before I exited and went to cell front.
MR. PORTER: To where, I'm sorry?
A. To cell front, standing outside the cell.
Q. So up to that point in time ten or 15 minutes.
Do you recall approximately how many efforts you observed being made by either team member -- well, by both 21 and 9?
A. I actually wasn't counting at that time. Four, six possibly. But that's an estimate.
Q. Fair enough.
So what prompted you to leave the Equipment Room and go to cell front?
A. It started becoming apparent that they were having difficulty achieving venous access.

Q. And when did that become apparent?
A. When I left the Equipment Room ten minutes into it. Normally it doesn't take that long. We've been very conscious of this part of the process. So I went to cell front to start being able to ask questions and --
Q. Did anyone go with you?
A. No.
Q. So the director remained in the Equipment Room; is that correct?
A. Yes, that's correct.
Q. At the time you left to go to cell front do you recall whether the director was still on the phone or not?
A. I don't recall.
Q. Does your movement out of the Equipment Room to cell front, is that something that was recorded on the timeline to your knowledge?
A. Not to my knowledge. Nor would I expect it to be.
Q. Why not?
A. Just not -- it's not that significant to the process itself.
Q. So at this point ten minutes, 15 minutes

roughly into the process you make the judgment based on what you've seen four to six maybe attempts have been made without success that they appear to be having some problems, I think it would be helpful for me to go to cell front and see if I can get some answers, or what?
A. Well, I can just start listening to the discussion so I can get a better sense of what we're encountering.
Q. Was the director on a cell phone or a landline?
A. Landline.
Q. And I know I just asked this, I'm sorry to have to do it again, but when you went to the cell front was he still talking on that landline?
A. I don't recall.
Q. Might have been, might not have been.
A. That's correct.
Q. In terms of your protocols and procedures would you expect that he would still be speaking on the phone with the Governor at that point in time, or the Governor's Office?
A. Yes.
Q. Is the normal practice to kind of be on

the phone throughout the whole process?
A. Yes.
Q. And kind of narrate for the Governor or his staff what actually is happening.
A. To continue your football analogy, it's play by play.
Q. I got you. And the director is the one providing that play by play?
A. To the Governor.
Q. Not Mr. Morgan who is --
A. That's correct.
Q. -- on the phone to the Command Center.
A. That's correct.
Q. He's providing the play by play to the Command Center.
A. Mr. Morgan's in the Command Center getting play by play by Captain Miller who's in the Equipment Room.
Q. I got it wrong. Miller is in the Equipment Room providing play by play for the Command Center and those folks in the Command Center are then recording that play by play into the timeline.
A. That's correct.
Q. Is it their requirement to put down

everything Miller tells them on the timeline? Or do they have some judgment they exercise?
A. No, they have some judgment. But I mean he's trained to know what significant events or occurrences need to be communicated to him to go on the timeline.
Q. "He" meaning who?
A. Captain Miller.
Q. Miller's doing the play by play.
A. Yeah.
Q. He's the Vin Scully in this analogy.
A. Right.
Q. But my question is more do the people on the other end, are they supposed to write down everything "Vin" says or do they have some judgment?
A. No, they have some judgment. They can summarize it or change the wording to make it easier for data entry.
Q. But, for example, if Captain Miller or whoever is manning the phone in the Equipment Room that day would say "Mr. Voorhies just left the Equipment Room."
A. They probably put it in.
Q. Would it be your expectation that the

people in the Command Center would actually enter that data or would they have the discretion to say that's not really that important, we don't need to add that?
A. No, they would have the discretion, but they would enter it.
Q. But they do have the discretion to choose not to, is that your testimony?
A. Yes.
Q. And there's no record made of what Mr. Miller or anyone else in the Command Center says that day other than what gets entered on the timeline; is that correct?
A. That's correct.
Q. In other words, there's not an audiotape made or a tape recording made or anything like that.
A. That's correct.
Q. Where people could go back and say let's make sure this gets on the timeline, we missed it the first time.
A. That's correct.
Q. So you are at cell front. What did you observe?
A. Continued efforts to try to achieve

Page 134

venous access, and I first observed Team No. 9 appeared to be tired.

Q. How did that -- how did you draw that conclusion?

A. She just physically started looking like she was tired. She was squatting down on her knees. I squat down on my knees for several minutes, you're going to tell that I'm uncomfortable.

I could tell that she didn't appear to be comfortable in the position she was in. And if memory serves, I think I said something to the warden about asking Team No. 9 if she needed a break.

Q. So the warden was at cell front too at this time?

A. That's my recollection, yes.

Q. Did you and the warden go together or did he go first or how did that work?

A. No, he was there already I believe before I got there.

Q. Okay.

A. The warden's kind of free once that starts. I know I did it, I've seen Warden Kerns do the same thing.

The warden, once they're in the cell

Page 135

trying to get the venous access, kind of floats from cell front back to the Equipment Room and back.

Q. It's your recollection that's what Warden Kerns was doing on that day.

A. Yes.

Q. And then other than the warden then and yourself was anyone else at cell front at the time you arrived there ten or 15 minutes into the process?

A. No. Not beyond folks you've already described who are in the cell.

Q. So you see -- when you say Team No. 9 was on her -- was she kneeling?

A. She went from kneeling and at one point I even recall her putting her right knee actually on the floor, which was one of the first signs I thought that she was getting tired of kneeling.

And then I remember thinking that's a hard tile floor, that won't last long being on your knees.

And it was shortly thereafter that I believe I said something to Warden Kerns about asking her if she needed a break.

Q. And at the point in time when you observed Team Member 9 can you recall what part of

Page 136

Mr. Broom's body she was working on?

A. I believe she was still working on his arm.

Q. And what happened, you suggested maybe she needs a break. Did the warden then say anything to her? What happened then?

A. Yeah, I don't know what he said. He kneeled over beside her, said something, she stood up and she exited the cell and came out in the outer part of the cell where I was.

Q. Do you have any recollection as to what if anything was said by the warden to Ms. No. 9?

A. No.

Q. Did you hear anything Ms. No. 9 said in response?

A. No. I just saw her get up and come out.

Q. So she came out. She went where, in that hallway?

A. No. What I characterize as the hallway is the connector between the cell and the Equipment Room and the Chamber. She went to the outer area between the cell and the hallway.

There's like a, for lack of a better description, a lobby area right there where the team

Page 137

members sit when they're watching the inmate.

Q. If I hand you Exhibit 85, which is a schematic architecture drawing I guess of the Death House, could you kind of point to it?

A. You've got it labeled there as a hallway. You say the "hallway," I'm thinking of this. The connector between the cell and the Chamber. This has got seats in it where the team members sit. This is where the computer is. So this is, let's call this the cell hallway.

Q. And on the diagram it's depicted as the 8-by-20 hallway.

A. Yes.

Q. She was in this vicinity.

A. Yes.

Q. And you were at this time standing in front of the holding cell?

A. Well, I would have been back off -- there's the door. I was off in this area looking through the window, so I stayed out of their way.

Q. So you were sort off to the left of the door back a few feet away from the cell.

A. Yes. As you face the cell, yes.

Q. So Team Member 9 comes out.

A. That's correct.
Q. Did you speak to her at that time?
A. Yes.
Q. And tell me what you said and what she said if you can.
A. Just asked her if she was okay. She said yes. She was sweating. And I picked up an I think it was an 8 and a half by 11 tablet and just kind of started to fan her a little bit.
Q. Did she say anything about the arms or the process or why she was having difficulty?
A. That was my first report that both her and Team Member 21 had got veins but they blew.
Q. So she actually said that?
A. Yes.
Q. Do you remember what words she used?
A. No, I do not.
Q. But the gist of it as far as you recall was they were having problems with getting veins.
A. Yes.
Q. Was she crying?
A. No, she was sweating. Profusely. And like flipping the front of her -- she wears the scrubs. She was kind of flipping. She was hot.

Q. Was she upset?
A. Maybe a little frustrated would be an accurate descriptor.
Q. And where -- did she then remain standing in this area?
A. No, actually she had a seat there.
Q. So she sat down.
A. And one of the other team members who weren't in the cell sat down beside her and I continued to fan her. Talked a little bit. And then I returned my attention to Team Member 21 who was still inside.
Q. The other team member that sat with Team Member 9, do you recall who that was in terms of numbers? Was it 17?
A. No. It was Team Member No. 6. By my recollection.
Q. Team Member 6. And where would Team Member 6 be stationed during the process? Because he wasn't one of the people in the cell, correct?
A. That's correct.
Q. So where did he come from? Is it a "he"?
A. No, it's a she.
Q. A female security member?

A. That's correct.
Q. Where did she come from if you know?
A. The hallway. The other hallway.
Q. This one?
A. Near 16-by-6 hallway.
Q. Is it your understanding she came from J1 then? Or was she actually stationed in that --
A. She was stationed in that hallway.
Q. With what function or what duties?
A. If memory serves, she was destined to be on the restraint team once we entered the cell, which obviously never occurred.
Q. Were there other people on the restraint team waiting in the 16-by-6 hallway?
A. Yes. There's always -- there will be two of them at the door.
Q. At the door to the Death House.
A. Yes.
Q. The Death Chamber.
A. That's correct. Because when we get to the point of actually moving the inmate in, they actually step inside and they serve as a shield between the inmate and the area between the Equipment Room and the bed where the IV lines extend from the

Equipment Room to the bed.
Q. They don't want the inmate to trip over those.
A. Or to lunge at them intentionally to disrupt.
Q. Is it your testimony, Mr. Voorhies, there would be two security people in this hallway at this point in time?
A. Two at the door and a third member that usually is standing right here at the entrance into J1.
Q. So three then roughly, it would be your expectation security people would be in this hallway, in the general area of this hallway, 16-by-6 hallway.
A. Yes.
Q. During the time venous access was being attempted in the holding cell.
A. Yes.
Q. So one of those people came over and sat with Team Member No. 9.
A. That's correct.
Q. So you went back to the holding cell and at this point in time am I correct in understanding that Team Member 21 remained in the cell and

continued his efforts on Mr. Broom's right arm?
A. **Yes.**
Q. You got back there, what did you observe? Was he still the only medical member in the cell?
A. **Yes. But at some point --**
Q. Team Member 17?
A. **Yes, Team Member 17 was out there as well, and I don't recall specifically when he joined in the efforts to start assessing and trying to help them. But at some point I believe before I consulted with the warden and the director and we pretty much legislated a break. A complete break.**
Q. In other words, a break different than the break the Team Member 9 took. In other words, everyone's taking a break now.
A. **Yes.**
Q. So at some point after Team Member 9 left and sat down and was cooling off you went back to the cell, Team Member 21 was still working.
A. **Correct.**
Q. At some point after that Team Member 17 came to the cell and assisted to get IV access, correct?
A. **Yes.**

Q. And at some point after that a break was taken for all the medical team members; is that correct?
A. **As well as Mr. Broom.**
Q. Correct. Right. As well as Mr. Broom. Right?
A. **Yes.**
Q. And who made the decision to have that break?
A. **It was a collaborative one. The warden, my observations when I came out talking to the warden, warden then stayed in the cell and I went and talked to the director and collectively we decided seemed like it was just past a half hour point.**
Again I'm not -- I'm sure the timeline reflected, but somewhere after about 30 minutes of trying pretty hard we felt it was time to take a break.
Q. Was it the warden had that idea first, did you have that idea first? If you can remember how that came to be that a break was called.
A. **I guess you could say I started that ball in that I'm the one that observed Team Member No. 9 needing a break. That was my first signal that maybe**

we shouldn't go on too much longer before everybody can use a little break.
Q. And so you discussed that with the warden.
A. **That's correct.**
Q. What was his response?
A. **He concurred.**
Q. And then did you have to go to the Equipment Room to discuss that with the director?
A. **Yes.**
Q. And did you do that then?
A. **Yes.**
Q. And tell me if you can recall your conversation with the director on that topic. What did you say, what did he say?
A. **If memory serves, he was on the phone at the time. He was, when I walked back in the Equipment Room he was standing looking at the monitor, so his back was to me and he was talking, and waited, wasn't going to interrupt.**
Waited for a pause and I believe I tapped him on his left shoulder and said director, we're thinking we might need to take a break. And he concurred.

Q. Did he concur immediately or did he say let me talk to the Governor or did he talk to the Governor before concurring? How did that work?
A. **I don't recall any other discussion on that other than "okay."**
Q. He was still on the phone when you saw him back in the Equipment Room I guess then, right?
A. **Yes.**
Q. Still on that landline, correct?
A. **Yes.**
Q. To your best understanding still on the phone with the Governor's Office.
A. **To my understanding.**
Q. And as to whether he was speaking with the Governor at that time or not?
A. **Could not tell you.**
Q. But either the Governor or someone on his staff.
A. **That's correct.**
Q. We can always ask him. He'll know I guess who he was talking to.
A. **That's correct.**
Q. So the director gives the thumbs up, okay, sounds good to me. Then what happens?

A. I believe we then told the medical team they have an area back in J1, there's a seating area that they set up for the team who's not on duty. Down in the south side of J1. You actually have to go down steps, there's several chairs and a table.

Had them go down there and myself, the director, the assistant director, the warden, we all went in to talk to them about what are we dealing with here.

Q. So just so I get the sequence correct, the Director's in the Equipment Room, told him we want to have a break, he approved that. Did you then go back to the cell and announce the break or how did that happen?

A. I believe I met Warden Kerns right in about the doorway and said let's just take a break.

Q. So who told the people in the cell?

A. I don't know if he told the team leader who then announced it or he announced it himself.

Q. Were you present when he announced?

A. I think when I talked to him is when I turned around to go into J1.

Q. Do you hear anybody respond to the team leader or the warden saying we're going to take a

break?

A. No, I don't.

Q. Do you know if Mr. Broom said okay or complained about it and said I'd rather keep going, let's get this over with?

A. I don't have any recollection.

Q. You have no recollection or wasn't present?

A. I wasn't present. I don't recall him saying anything to that affect to me. I was at cell front but at the announcement he, as I understood your question, I wasn't there.

Q. Was the issue of a break discussed at all while you were at cell front?

A. Yes. Between myself and the warden.

Q. Right, I know you said that, but was it discussed in the sense that the people in the room, the cell were privy to that?

A. Yes.

Q. Or were you and the warden just discussing it privately?

A. No. I recall on more than one occasion the team leader asking Broom if he wanted a break.

Q. And what did Broom respond?

A. He didn't want one.

Q. He wanted to keep going.

A. Yes.

Q. So at no time did you hear Mr. Broom say yeah, I want a break. Is that your testimony?

A. That's correct.

Q. Now, so the break happened, the security people I imagine stayed in the cell with Mr. Broom; is that correct?

A. That's correct.

Q. Would that include the team leader or not?

A. Well, he I think trailed behind but he ended up coming into J1 as well.

Q. But there would have been at least three security people still in the room.

A. Yes. That's all the minimum.

Q. And so you guys went into J1. Do you know, can we take a look at the timeline and let me know if you see on the timeline where this first break is documented, if it is.

A. If memory serves, I think it was but let me see. Looks like it's at 2:42. The medical team has been told and they're exiting the cell, and then

on page 304 team director giving the medical team and the inmate a break for right now.

Q. So that is approximately --

A. 2:47 inmate laying on the cell bed with his arms on his chest.

Q. So we're talking approximately 40, 45 minutes into the process; is that correct?

A. Yes.

Q. You see a 2:30 on the timeline? 2:30 -- 2:00 o'clock, 30 minutes after 2:00, 45 seconds, so I don't know if I'm saying that right.

A. Yes.

Q. But there's an entry IV sites have not been established, medical has exited itself for a break. Do you see that?

A. Yes.

Q. Do you know what that's referring to?

A. I assume that's when Team Member 9 came out.

Q. I just wanted to know if that is what you think that would be referring to. And so that would mean that Team Member 9 took that break. You described where she was getting hot and needed to cool off approximately 30 minutes into the process;

is that correct?
A. **Yes. I'd have to further review the timeline, but that sounds reasonable.**
Q. I'm just looking at 2:12 in the afternoon medical entered the cell. This break appears to be taken at approximately 2:31 in the afternoon.
A. **Right.**
Q. You agree?
A. **Yes.**
Q. And then it appears another ten or 15 minutes pass and there's a break for everybody.
A. **Correct.**
Q. So then you went into J1 and can you tell me what you can recall of the discussions in J1?
A. **Just about the feedback that we were getting from the medical team members and that's where we got the details about they had actually thought they had established more than one vein and when they went to do the saline, that it blew.**
Q. Is that the word they used, "blew"? Or did they use another word? I'm just trying to get your best recollection of what was said by the medical people.
A. **Team Member 17 used that word with me**

repeatedly. Said as soon as we get it, it blows.
Q. So by this point in time is it your testimony that Team Member 17 had actually been in the cell working on Mr. Broom, correct?
A. **That part I'm not certain of because part of his recounting to me was also what he was doing when he was assisting Team Member 21.**
Q. That's what I mean, he had been in the cell.
A. **Yes.**
Q. And I know you weren't there the entire time watching because you described some of the things you were doing, but 17 had already gone in the cell before that first break, correct?
A. **That's my recollection.**
Q. And had been either assisting 21 and/or himself making attempts on Mr. Broom's arms or hand or whatever, correct?
A. **That's correct.**
Q. So 17 used the term we get them and they blow. What about 21, do you have any recollection of what Team Member 21 said?
He's the guy I think with the beard.
A. **Yeah. No, because at that point if I**

remember right they were down in the lower area of J1 and then I was up top discussing with the director what we wanted to do after the break. And how much longer do we want to try. It started, the planning process began of "what if."
Q. Yeah. Why don't you tell me what the what ifs were that you and the director discussed?
A. **What if they can't get a vein, what are we going to do? Never been confronted with that before. What are we going to do? And we discussed that we would not go on indefinitely. Because we just didn't think that was reasonable to do, so.**
And we then, the director started thinking out loud, if you will, about the implication of that and having to advise the Governor and what the Governor's response would have to be if we said look, we're just not going to be able to proceed, we're going have to request a reprieve.
So some of those discussions started taking place away, intentionally away from the medical team members. Because the decision had not been made at that point to abandon our attempts to establish an IV. But it was time to start thinking in that direction in terms of planning for that.

Q. Who was involved in those discussions with respect to the what ifs that were occurring away from the medical team; you, the director, anybody else?
A. **The assistant director.**
Q. Use his name if you would please.
A. **Mr. Moore, Ernie Moore.**
Q. Okay.
A. **And then --**
Q. What about the warden?
A. **Yes. But I think he was also moving between where we were talking back over with the medical team to get their reports on how to proceed. I don't recall him being there for the entire discussion.**
Q. So at the time, and let's just focus for now on the discussions between you and the director, Mr. Moore about the what-if scenarios.
Was one of the what-if scenarios then that the process would have to be called for the day and a reprieve would need to be sought?
A. **Yes.**
Q. Was there any discussion as to how long you would be willing to go before making that

request?
A. Yes, there was discussion, and we seemed to come to an agreement that we didn't have an established point. There was no discussion saying we're going to try this for two hours and stop.
What we talked about was we need to see how the team is doing, see if Broom continues to be -- appears to be reasonably comfortable and compliant, and the combination of those factors, if you will, would point us towards that point.
Q. Would point us towards what point it is we should stop.
A. Yes.
Q. So it was a decision that was going to have to be made potentially but it wasn't made at that point this time.
A. That's correct.
Q. You didn't at that point in time say we'll go another ten minutes or another hour?
A. No.
Q. It was at that point in time a decision that you thought you may have to encounter that day but at that point no decision was made.
A. That's correct.

Q. The issue of seeking a reprieve, that was discussed at this time; is that correct?
A. Yes, that's my recollection that at least preliminarily the what if being if we're not able, we're going to have to request a reprieve from the Governor's Office.
Q. Did the director or did you or the director or anyone suggest we need to let the Governor know, we need to be -- may need to be able to do this? Was that discussed at that time or not?
A. I don't think it was discussed because based on the director's participation in that conversation, he was keenly aware that the Governor would have to be notified and that he would have to make that request.
Q. I guess I know that. I know you guys all knew that you couldn't get a reprieve without involving him. That's what you mean, correct?
A. Yes.
Q. But my question is really more specific: Were you at that point discussing -- director, was the director saying it might be a good idea to let the Governor know now that we may be needing this thing today and let him -- give him a heads up this

might be something he needs to be prepared to do, that kind of thing? Or not?
A. I don't recall.
Q. Fair enough.
Was there any discussion of alternative means being used to get access to Mr. Broom's veins or to otherwise get the process completed if the IV access through the peripheral veins continued to be problematic?
A. Not at that time.
Q. Did that happen later that day?
A. Yes.
Q. During this same break or later?
A. No, my recollection is that the issue you're referring to occurred after we resumed the second attempt to send the team back in.
Q. And what am I referring to?
A. You talking about alternative means of trying to --
Q. Yeah.
A. That it was somewhere after the team went back in and had been attempting for some time that I prompted the warden and asked him if he wanted to consider asking his physician if she'd be willing to

advise.
Q. And we'll talk about that. But this was something that did not happen during that first break.
A. That's correct.
Q. It happened later in the day, correct?
A. That's my recollection.
Q. Was there any discussion during this first break about stopping the process right then and not going any further?
Let's stop it now, we've gone a half hour, we've had three people trying, we made -- we've not been successful, we've given our best shot today, we need to stop.
A. Yes, that was at least discussed as one of the alternatives, but at that point we weren't getting the indications from the team that venous access was not going to be achieved today.
Q. So tell me then if you would what was the advice the team -- by "team," you mean the medical team members, correct?
A. Yes.
Q. -- what their input and feedback to you and the others was at that time.

A. Was that he had bad veins. I remember that being the discussion. Seemed like that's when the discussion came up that Broom had originally said something to one of the medical team members about being a prior IV drug user, and then later told another medical team member that he never used drugs.

So there was those discussions about the brittleness of his veins, the blowing once they thought they had an IV established.

And they seemed mentally and physically able to try to continue with some hope of getting useable veins but there was clear concern about whether or not that was going to occur.

Q. And was that clear concern expressed by all three of them?

A. Yeah. I mean I don't recall them specifically all speaking to that affect but that was my impression.

Q. Did anyone dissent and say no, we're going to be able to do this, don't worry, this will be no problem, any of the medical members? Any of them of that view we will be able to get this done?

A. No, I don't believe that.

Q. Is it your recollection that the

consensus of the medical team was this is problematic, we may not be able to get this done?

A. Yes, that would be a fair way. But conversely, we may.

Q. Okay. But this was communicated during that first break.

A. Yes.

Q. This issue of IV drug use and all that, you heard nothing from Broom on this I take it; is that correct?

A. No, I did not. I personally did not.

Q. So whether that was said or not said you don't know.

A. I do not know.

Q. Correct?

A. Correct.

Q. Because I notice somewhere in the timeline there's a reference to if you take a look at the exhibit it's page 304, Mr. Voorhies. I think it's at 3:11 in the afternoon 9/15/09, medical team having problems maintaining a vein due to past drug use. Do you have any knowledge as to how this got in this timeline?

A. No, I don't. Other than what I learned

after the fact that was in response to a question from one of the medical team members and then they reported that Broom self reported past IV drug use.

Q. So is it your judgment then that that's probably how it got in?

A. Yes.

Q. Somebody heard that in the Equipment Room.

A. Somebody must have heard it in the Equipment Room, yes.

Q. Otherwise it wouldn't get in the timeline, would it?

A. Correct.

Q. So Captain Miller obviously, or maybe it's not obvious. Is it your belief that Captain Miller made this entry? Or announced this information to the Command Center in some form?

A. That's correct.

Q. Over the Command Center line.

A. That's how it would have occurred.

Q. That's the only way it could have occurred.

A. That's correct.

Q. So I guess your testimony is that for it

to appear in the timeline like this, Captain Miller must have made an announcement over the Command Center line from the Equipment Room to the Command Center to the effect that there was this issue of past drug use.

A. Yes.

Q. And as to where he got that information from?

A. That I can't tell you.

Q. You don't know, correct?

A. I don't know.

Q. As to whether that information is even accurate you can't tell me either.

A. That's correct.

Q. So you're discussing here at this break -- how long did the break take if you can remember?

A. I'd have to look at the timeline. I want to say it felt like 15, 20 minutes.

Q. I think the timeline appears to show the medical team exiting the cell at 2:42 p.m. on the 15th. That's at the top of page 305. And then --

A. At 3:05 they're now back in the cell.

Q. I see it.

A. I see what you're referring to.
Q. So that would be roughly 20, 25 minutes later, give or take.
A. Correct.
Q. Is that consistent with your recollection about a 25-minute break?
A. Yes.
Q. During this break did anyone seek from Mr. Broom his input in this process as to whether to continue or not, how he was doing, any of that stuff?
A. Yeah, at one point right before we got started again I talked to him, and I can't speak to what others did. I was back in J1.
Q. You talked to him?
A. But not in the sense you are asking, because we were already heading back to resume. I did not consult him about are you okay to continue, that type of thing.
Q. Are you aware whether anyone did?
A. I'm not aware.
Q. And I guess nobody came back with any kind of report on that at the time you were back in J1.
In other words, to report to you and the

director, Broom doesn't want to continue or Broom does want to continue or anything like that.
A. No.
Q. Report of any kind.
A. No report, but there was discussion about the fact he was still being cooperative and was not being oppositional with the team members, that type of thing.
Q. How much time was spent if you can recall during the break by you and the director and the warden and the assistant warden and anyone else who were sort of decision makers here, speaking with, getting input from the medical team as to what they thought they were facing? How much of that 20, 25 minute break?
A. Between five and ten minutes tops.
Q. And just so the record's clear, the report or the input that was coming from the medical team was that the veins were difficult, correct?
A. Yes.
Q. That they were blowing when we're able to get them; is that right?
A. That's correct.
Q. And that we may not be able to get this

done; is that correct?
A. That's correct.
Q. Did any of them express the opinion or the belief that a further effort should be made or could be made that day?
A. Yes, that's my recollection that they could go on. That's why we went another round of them trying to establish it.
When you asked earlier about if any of them asserted definitively we need do this again because we'll get a vein, no, they didn't do that.
Q. But my question though is did any of them say we should continue? Or we want to continue? Anything like that?
A. I don't recall it be couched to them that way. I recall it being discussed of are you able to continue? Is there still a reasonable chance that we can establish venous access?
And they expressed their concerns but it seemed like they agreed that that was a reasonable possibility.
Q. So was it presented to them that way? In other words, is there a reasonable chance we can get it -- well, that's a poor question.

I guess what I'm trying to understand is did they have the option of saying I think we should stop today? Or were they --
A. Well, yeah, if they had just said unequivocally we're never going to get this guy's veins, that would have changed things.
Q. But you weren't hearing that I guess at this point.
A. No.
Q. Was there any discussion with the medical team as to what we were going to try differently when we went back into the cell to see if we could get a different result than what we've had in the first 30 or 40 minutes?
In other words, what was the game plan to change this so it would work the next time?
A. My recollection was that there was some discussion because I had been involved in Newton where there was discussion about is there any value to having him sit on the side of the bed so you can look at veins around his ankles, lower calf area, that type of thing.
I remember there being discussion about ingesting more fluids, but that's when that

discussion in my recollection took place about looking at other alternate sites.

Q. During that first break.

A. Yes.

Q. And "other alternate sites" meaning the feet?

A. Right.

Q. The ankles.

A. Right.

Q. What about the hands, or had they already been looked at?

A. I think they had explored that in the first session.

Q. So when the second session, am I correct in understanding your testimony that the strategy was to go back in and take a look at the feet and the ankles?

A. Yeah, but not exclusively. That doesn't rule out from going back and looking at the top of the hands again. But that, yes, that was my sense of what the play was going to be, to look at other alternative sites they had not yet considered.

Q. Any discussion about the neck as a possible alternative site?

A. Not when I was there.

Q. Take a quick bathroom break?

(Off the record.)

Q. Back on the record after the break. Thank you for the break, Mr. Voorhies.

We were talking about I think the meeting in the J1 area during this first break.

Anybody else you can recall speaking with other than the director, the warden, the assistant director, the other sort of key people you've already identified and the medical team during this break?

A. No.

Q. Do you know whether the warden had any communications with the Governor during the first break?

A. The warden?

Q. I'm sorry, the director.

A. Not during. At some point once the decision was made that we were going to resume an attempt to establish IVs, and I'm not certain, my memory's not that clear, but at some point he then went to call the Governor back to advise him of what we were going to do. It would have been toward the end of that break. I'm not certain where that

occurred.

Q. And the issue of consulting with the doctor did not come up until sometime after this break; is that correct?

A. That's my recollection.

Q. Your best recollection is it wasn't discussed at all during that first break.

A. That's correct.

Q. Was the nurse, the health care administrator, acting health care administrator Ms. Clagg present at all during this first break either in the meetings with you and the director and the other management team or with the interaction with the medical staff, the medical team members?

A. No.

Q. Do you know where Nurse Clagg was at this time? Do you have a recollection?

A. No, I do not.

Q. So what happened next? The break ended. What happened next?

A. The medical team reentered the cell. They resumed their efforts. And as I stated previously, sometime after that resumed is when I reminded the warden that our own policy says that he

can bring in institutional physicians and other medical personnel as he deems necessary.

I said is that something you'd be willing to consider in terms of asking the doctor, physician -- I think first I asked him is your physician even here. And then he responded affirmatively.

And I went and briefed the director on my suggestion and I believe his response was something to the effect of two qualifiers; one, only if she's willing, and two, it's an advisory capacity only.

Q. When you say that you reminded the warden about the provision of the policy that allows him to involve a physician, where is that in this written policy Exhibit 12?

A. It doesn't say "involving a physician."

Q. Yeah, I may be misquoting you, but the provision in the policy that you're referring to, is it in Exhibit 12A?

A. Such number of physicians, page 3 of 10, paragraph D, such number of physicians of the institution where the execution is to be conducted and medical personnel as the warden or acting warden thinks necessary.

Page 170

Q. So that would be under --
A. General Guidelines, Attendance at Executions.
Q. So that addresses who will be attending the execution; is that correct?
A. Yes.
Q. And one of the provisions for attendance is item D, which as you just quoted allows for such number of physicians of the institution where the execution is to be conducted, correct?
A. Yes.
Q. As the warden or acting warden might think necessary.
A. Yes.
Q. That just addresses attendance. Is there anything in the policy that we're looking at, in other words, to me that appears to address who can be present at the execution. Is that how you read that or not?
A. Well, yes. But I guess my interpretation is broader than that. You could make the point that the regional director, my position is not delineated anywhere in that as attending the executions but I have a role.

Page 171

Q. I know, but there's nothing in this provision that you're pointing to that addresses physicians being involved in any part of the actual process of carrying out the execution.
A. That's correct.
Q. So we're agreeing on that point I guess.
A. Yes.
Q. But in your testimony a moment ago when you said you reminded the warden about the provision in the policy allowing him to have physicians present, is this what you're thinking of and what you're referring to?
A. Yes.
Q. So that's what you reminded the warden about.
A. Yes.
Q. Before we get on to that I want to ask you some questions about the doctor and how she got over there, but how long had the efforts been going on before you even raised that topic? And let's say the efforts with respect to the attempt after that first break.
A. Don't recall. It was earlier rather than later in that second period of attempting to

Page 172

establish venous access.
Q. Where were you when the second period began? In other words, when they began the process of trying again, where were you stationed?
A. Again in the outer hallway outside of the cell.
Q. Was there anyone else there with you?
A. At some point in my recollection is that is when Nurse Clagg came into the area of the hallway.
Q. Anyone else? Was the warden there, for example?
A. Yes.
Q. Anyone else besides you, the warden, and then eventually Nurse Clagg?
A. Not that I recall.
Q. Where was the director at this time?
A. The director was back in the Equipment Room talking I believe to somebody in the Governor's Office.
Q. So he would be back essentially doing the play by play for the Governor's Office.
A. Yeah, watching the monitor.
Q. And Mr. Captain Miller would be doing the

Page 173

play by play for the folks in the Command Center.
A. Correct.
Q. Was Captain Miller present during the break when you and the director and the others were huddling about what to do?
A. No.
Q. Do you know where Captain Miller was at that time?
A. I can't say definitively. My assumption would be that he remained in the Equipment Room.
Q. Perhaps continued to narrate?
A. Yes.
Q. So, for example, if we looked at the timeline and we see, for example, 2:49 in the afternoon the inmate is wiping his face with tissue I think is what that's supposed to read.
A. Right.
Q. So that would have been an entry that would have been recorded as a result of narration provided by Captain Miller during the break.
A. Yes.
Q. Saw information in here about Ms. Shank, who is Mr. Broom's lawyer, being cleared and coming in the Death House. That would be something narrated

by Captain Miller or an entry made at the Command Center?

A. No, that would have been made by Captain Miller because Mr. Stout was over there at that time and that was a result of Broom requesting to see his attorney at that point in time.

Q. Do you know when Broom made the request to see his attorney?

A. I'd have to refer to the timeline. It was in the second session by my recollection. After the break.

Q. Because I'm looking at the timeline and it appears that if the timeline's right, 3:05 in the afternoon medical team went back in the cell. So I'm reading that as when the second session began.

A. Right.

Q. Do you agree with that? About 3:05 that second session began.

A. Agreed.

Q. And it appears that these entries about Ms. Shank precede that.

A. That may indeed be. It was right simultaneous with that.

Q. So sometime before the break ended is it

your understanding that the request for the attorney was made?

A. That's what the timeline reflects. I thought it was shortly after we resumed but the timeline speaks for itself.

Q. Were you present either at the cell front or in the vicinity when Mr. Broom made a request for the attorney?

A. No.

Q. So you didn't hear that?

A. No.

Q. And have no knowledge about that; is that correct?

A. That's correct.

Q. You just know what you read in the timeline; is that right?

A. That's correct.

Q. Were you aware during the break when you were back there with the director and the other folks in J1 during that first break, were you ever made aware that the inmate had requested to see his attorney?

A. Yes, I was made aware because I remember the discussion that ensued between Mr. Stout and the

director about bringing Ms. Shank over to the Death House and clarifying that she could go into the witness room.

Q. This discussion between Mr. Stout and the director, did that occur during the first break? Or after or before? Or do you recall?

A. Don't recall.

Q. But you remember there being a discussion between --

A. Yes.

Q. -- Mr. Stout and the director about that topic.

A. When I heard about it I was out in the hallway and Mr. Stout was going to I believe go get Ms. Shank personally and get her over there.

Q. And what you're unsure of in terms of the timing is whether that was during the break, before the break, after the break.

A. Correct.

Q. But you were personally present when that discussion occurred between the director and Mr. Stout; is that correct?

A. That portion of it, yes.

Q. What direction did Mr. Collins give

Mr. Stout on that topic?

A. To honor the request but that she could come over to the witness room only.

Q. In other words, the room where the inmate's witnesses would be permitted to go.

A. Correct.

Q. She would not be permitted to come into the holding cell area, speak with Mr. Broom; is that correct?

A. That's correct.

Q. That was the direction given by the director; is that right?

A. I don't remember it being expressed as a directive. I just remember that the qualifier was she can go to the witness room.

Q. But I mean it was clear to you that the director was making it clear to Mr. Stout --

A. Yes.

Q. -- that the lawyer was not allowed into the area of the holding cell and could not personally speak with the inmate.

A. That's correct.

Q. Could have no communication with the inmate, correct?

A. Correct.
Q. And in fact that's the protocol and policy, is it not, that once the process begins, no attorneys are allowed back there to talk with the inmate; is that right?
A. That's correct.
Q. And that process ends the permission for the attorney to have communication with the inmate, and I'm talking about here about an attorney who is the inmate's attorney, in other words, the rule that the inmate may no longer have communications with his or her attorney begins with the beginning of the process; is that correct?
A. That's correct.
Q. I know it's kind of a convoluted question but I think we're both on the same page.
You're back in front of cell front, a second period begins let's call it just for purposes of we're both on the same page as to what we're referring to.
Before you have your discussion with the warden about maybe bringing the medical doctor over what do you see? Where are the -- who's in the cell, which medical members, and what are they doing?

A. My recollection is that Team Member No. 9 again had some involvement on what would have been Broom's left side nearest the door. Seems like both 17 and 21 were examining alternative sites on the other side, and then shortly thereafter is when I had the discussion about the physician.
Q. Let's focus on the left side if we could where Team Member 9 is, the female phlebotomist. Where particularly on his body did you see her working at that time in the second period?
A. If memory serves she started looking at the top of the hands again.
Q. So would have been his left hand.
A. Left hand. And one of the -- for whatever reason one of the things I recall is them talking about even reexamining the primary injection sites that they had considered earlier.
It seems like I remember one of the two other team members, I didn't see them talking but I heard the comment that you could do that as long as you went above, higher, closer to the heart from where you had previously attempted an injection.
But I just overheard that conversation. So I know she appeared to be looking at that higher

up on the inside
Q. So higher up from the antecubital area, the elbow area.
A. Yes.
Q. Above that, so the biceps area.
A. Yes. And it was somewhere in that time frame that I left, I talked to the warden and then went and talked to the director, as I previously stated.
And then had some discussion in that hallway I believe with Mr. Stout. And then I don't think the warden was in the hallway, he was out by the hallway. I'm talking about the inner hallway between the Chamber and the cell.
And then I think I stood back at cell front for a while and then Nurse Clagg showed up sometime later with the physician.
Q. When you said before that Nurse Clagg was there outside the cell front when the second period was going on, was she there before the physician arrived and then -- or did she first appear when she brought the physician over?
Do you understand my question?
A. Yes.

Q. I thought I heard you say she was there. It was you, her, and the warden for some period of time when the second period began.
A. Yes.
Q. Is that right or not?
A. That's my recollection.
Q. And she must have left to go fetch the physician; is that correct?
A. Yes.
Q. And then come back.
A. Correct.
Q. So but let's get back to what you observed before the physician arrived. So you've told me about what No. 9 was doing on the left side, correct?
Did you observe what 17 and 21 were doing on the right side? Were they on the hands, on the arm, were they on the feet, where were they?
A. Didn't observe, don't recall.
Q. Where was Mr. Broom at this time? I know he was in the cell. But where on the bed; was he laying down, sitting up?
A. When they resumed I think he laid down at first. And then at some point shortly after is when

Page 182

she started working on the legs.
Q. When they worked on the legs was he sitting up?
A. Yes.
Q. Were his feet facing the door of the cell?
A. Yes. But I also believe they looked at him when he was laying down, on his legs.
Q. And how long, I mean maybe you won't be able to remember, but do you have a rough estimate as to how long from the time the second period began until you made the decision let's see about getting the doctor over here? How many minutes went by, ten, 15?
A. I think less than ten. My recollection is it is shortly after we resumed.
Q. So you're thinking ten minutes or so.
A. Or less.
Q. So you described what you did. You said to the warden have you considered this and said yeah, that's a good idea, why don't we do that? Is that?
A. I don't recall him saying "yeah, that's a good idea."
Q. What was his response?

Page 183

A. I think he said -- I don't know if -- I think I asked him is your physician even here. And he said yes, I think so. And then I said let me see if the director is okay with that.
I briefed the director on my proposal. He said, as I previously stated, yeah, if she's willing and in an advisory, if she's just coming over to give some advice, he was okay with that.
Q. Did he say what he meant by just coming over to give some advice?
A. No.
Q. Was he any more specific than that?
A. No.
Q. Did you have an understanding as to what he meant or what you thought he meant?
A. I thought I understood.
Q. What did you understand?
A. That she could come over, visually see what medical team members were doing, and if she had any, render advice.
Q. What happened next? They got the okay from the director, what did you do next?
A. They went and got her. There was seems like if memory serves, I qualified it to the warden

Page 184

who then communicated the request to Nurse Clagg.
Q. What do you mean "you qualified"?
A. About one, ask her, not going to tell her to come over here. Ask her if she is willing to come. And B, clarify that it was just in an advisory role only.
Q. And you communicated that to the warden I guess, right?
A. Yes.
Q. And you left it to the warden to communicate that to Nurse Clagg; is that right?
A. Yes.
Q. So you yourself did not communicate with Nurse Clagg about this assignment.
A. When she came over I did.
Q. In other words, when she came back with the doctor.
A. Yes.
Q. But in terms of communicating with Nurse Clagg as to what she was supposed to do in order to get the doctor over here, you did not have those communications.
A. No.
Q. That was handled by the warden; is that

Page 185

correct?
A. Yes.
Q. So did he leave the area to go get the nurse or was she still right there?
A. I don't recall where she was or where he communicated with her. I didn't see that.
Q. Was anybody in the room, in the holding cell, the team leader or any of the medical members or any of the security members or Mr. Broom, informed that you were looking into getting the doctor over?
A. No.
Q. So they were totally unaware this was being considered or was going to potentially happen; is that correct?
A. Yes.
Q. So as far as you know while you were shuttling back and forth the director and the warden dealing with this issue, medical members were still working on Mr. Broom.
A. Yes.
Q. So what happened next?
A. When Nurse Clagg got there with the physician is when I discussed whether reiterating, found out is she okay with this and reiterating just,

one, to advise us, that's --
Q. Where did you have this interaction with the physician?
A. Not with the physician, with Nurse Clagg.
Q. Let -- maybe I was unclear.
The warden goes to tell Nurse Clagg to get the physician.
A. Uh-huh.
Q. At some point does the physician appear?
A. Yes.
Q. When did you first see the physician?
A. Don't recall the time. I could estimate it by looking at the timeline. But as I started to say, my interaction was with Nurse Clagg.
When the physician got there it was in the second period as we're calling it, and I reiterated by asking Nurse Clagg is she okay with this, and did you tell her just for advice only. And she confirmed that.
Q. So you had a communication with Nurse Clagg to try to satisfy yourself that she had passed along to the physician what you believed the director had wanted passed along.
A. Yes.

Q. But you yourself did not have any conversations with the physician about this; is that correct?
A. None whatever, so.
Q. Had you ever met this physician before?
A. No. She was not the physician when I was there.
Q. So she was a complete stranger to you; is that correct?
A. Yes.
Q. How long after Nurse Clagg was asked by the warden to go and get the physician would you say it was before the physician actually arrived on the scene?
A. Again, I'd be estimating. I want to say ten minutes.
Q. Do you know whether the physician spoke with the director at all on September 15 before she came to the cell front and got involved in the process?
A. I don't think she did. It's possible if it occurred while I was at cell front and she came in. But I don't believe he did.
Q. But you had no conversations or you were

not present during any conversations that the director might have had with the physician.
A. That's correct.
Q. And your only communications about what the physician would be doing were with people other than the physician.
A. That's correct.
Q. And that would include Nurse Clagg, the director, and the warden, correct?
A. Correct.
Q. Do you know whether the warden had any discussions with the physician before she arrived on the scene?
A. No, I don't know.
Q. And you were not present for any such conversation, correct?
A. Correct.
Q. Does the timeline to your knowledge, sir, reflect the appearance of the physician or her participation? Do you know?
A. Don't believe so.
Q. You don't believe so?
A. I'd have to go back and review it again, but.

Q. I'm just looking. If we could maybe look on page 304 I think is the page these events would appear if they're here at all. Because 3:05 p.m. is when the second period begins, as we've discussed.
A. Right.
Q. And then I'll let you review and see if you see any timeline entries that you might consider to be a reference to the physician.
A. No, I do not.
Q. Do you know whether Captain Miller -- well, let me ask it this way.
Do you know why there are no entries on the timeline reflecting the participation of the physician?
A. No.
Q. Was there any direction given that you're aware of either by the director, the warden or anyone else, to Captain Miller that it was not to be put in the timeline?
A. Not that I'm aware of.
Q. If that happened, you weren't present when it happened.
A. That's correct.
Q. Wouldn't you expect that kind of an event

Page 190

to be in the timeline? In other words, you made the decision to get this physician over here, she was summoned. She came.
Wouldn't you expect that kind of a detail to be in the timeline?
A. Not necessarily.
Q. Why not?
A. Because other states that use physicians do everything they can to protect their identity and they're anonymity.
Q. I know. I mean I suspect that's true but it's no different than Team Member 17 being on the timeline, or the phlebotomist, all those people, their activities are detailed on this timeline in many places, correct?
A. Correct.
Q. So the physician is no different in that respect. Correct?
A. Correct.
Q. So it can't be anonymity because I mean I'm not -- there's no need for timeline to say that Dr. Bautista appeared.
But the timeline don't you believe should have indicated that the institution's doctor has

Page 191

appeared and is now at cell front.
A. Actually I wouldn't have went there because again by saying the institution's doctor, I've identified the physician.
Q. Or a doctor.
A. But I would stipulate it would have been preferable to at least say an additional medical team member has entered the cell. I would give you that.
Q. So the doctor comes over. When did you first lay eyes on her if you can remember?
A. Midway into that second period. I'm thinking logically in terms of if I thought it was early on when I brought the issue up, ten minutes or so lapsed for her to arrive. Midstream into that second period.
And again, we could look at the timeline. The second period I think went another 35, 40 minutes if memory serves.
Q. You think from beginning to end it was 35 to 40 minutes?
A. For the second period.
Q. Is that your best recollection?
A. Yes.
Q. And the timeline will confirm it, but 35

Page 192

to 40 is yours?
A. That's my snapshot in my mind.
Q. So she arrived roughly halfway through.
A. Yeah.
Q. And where were you when you first laid eyes on her?
A. Actually I was at cell front when I had the conversation in the hallway. I was coming out of the cell front and I had the conversation with Rosie, with Nurse Clagg.
Then I went I believe into the Equipment Room, told the director that the doctor was there and that she was willing to advise. It was at that time that Nurse Clagg and the doctor entered and when I --
Q. Go ahead. I'm sorry.
A. When I first laid eyes on her she was standing, just standing watching at the door at cell front.
Q. When you say it was at that time that Nurse Clagg and the doctor entered, do you mean entered from J1?
A. Yes.
Q. So you actually went back to the director and said "the physician is here"?

Page 193

A. Yes.
Q. How did you know that? I mean how did you -- who informed you that she was here? If they were still in J1 I guess is why I'm asking.
A. I don't recall if it was the Team Member -- seems like it was Team Member No. --
(Interruption.)
A. To my recollection it was Team Member No. 6 because that team member was the person manning the door between the hallway and J1.
Q. Okay.
A. She was the key lady.
Q. The female. Female security member.
A. That's correct.
Q. That's how you learned the physician and Nurse Clagg were there and ready to come in, you then informed the director.
A. Yes.
Q. Director was still in the Equipment Room?
A. Yes.
Q. Still on the phone with that landline?
A. Yes.
Q. And what did the director say?
A. "Okay."

Q. So then the door was opened by the Team Member 6.
A. Yeah.
Q. Nurse Clagg and the physician came in; is that correct?
A. Yes.
Q. And that's when you first saw this doctor; is that right?
A. When I exited the Equipment Room she and Nurse Clagg were already standing at cell front.
Q. And describe her please if you would for the record, the physician.
A. Short in statute, dark hair, appeared to from again -- I'd never met her, never talked to her. Appeared to be of Southeast Asian descent. Kind of chunky.
Q. And tell me what you observed then. You went back to the cell front area; is that correct?
A. Yes.
Q. In the vicinity of the cell front.
A. Stood in the back just again trying to stay out of the way.
Q. The warden was there too? Or not?
A. I don't recall him being right there. I

think he was in the hallway or just inside of the door but I don't recall him being right there when I was first saw the doctor.
Q. Was Rosie there?
A. Yes.
Q. She was sort of in the same vicinity of you.
A. Yes.
Q. And then Dr. Bautista, we've learned her name, is the physician. She was at cell front; is that correct?
A. Yes, that's correct.
Q. Why don't you just tell us what you observed from that point.
A. It seems like she just stood there and watched for a while, and I had another brief conversation with Nurse Clagg. Then simultaneous with that we were just getting more feedback that they weren't having any luck getting venous access.
So I was again on my way back to the Equipment Room to talk to the director. And I went back to cell front and saw her kneeling on the floor with Team Member No. 9 at Broom's feet.
Q. And what did you observe?

A. Didn't observe anything other than she was at his feet. Both of those folks were in the door, Team Member No. 9 was just inside the door and the doc was right inside the door and Nurse Clagg was outside to my left.
And I walked up and approached, turned around or looked there, Nurse Clagg turned around and I think I initiated I said what's she doing. And Rosie said I told her all she had to do was advise. She's palpating trying to find a vein on his ankle.
Q. Is that the situation when you arrived that's what she was doing as far as you could tell, she was palpating trying to find a vein?
A. Yes.
Q. And do you know or recall which ankle she was working on or looking at?
A. Couldn't see.
Q. Was anyone working on the other ankle at this time?
A. Don't recall that. Couldn't see that. Because of the positioning, the lower part of that wall is right there, I couldn't see.
Q. Did you -- what happened next? Play this out till the physician leaves the scene.

A. They didn't achieve venous access and that was now going toward the end of this period, the second period where we were starting to have the discussions about this is probably going to need to be called.
Q. Did you observe the doctor with a needle in her hand?
A. No, I did not.
Q. Did you see her make any insertion attempts on Mr. Broom's body either at his feet, his ankles, his legs, anywhere?
A. No, I did not.
Q. Did anyone report to you that she had done so?
A. Yes.
Q. When was that?
A. After --
Q. When was that reported to you?
A. After when we were back in the command post having a debriefing, if you will, with the medical team members.
Q. So you did not witness that; is that your testimony?
A. That's correct.

Q. Nurse Clagg when she looked at you when you arrived at cell front after being I think with the director, as you've testified just a moment ago, when she looked at you and said she was palpating, she's -- I told her she only had to advise but she's actually in there palpating, did Nurse Clagg at that time advise you that she actually made an attempt, Dr. Bautista made an attempt on the ankle?
A. I don't recall that at all.
Q. Do you have any recollection, Mr. Voorhies, as to how long the doctor was present on the scene at the cell front or in the cell on that day, September 15?
A. Again it would be an estimate. It wasn't that long.
Q. What would your estimate be?
A. Ten, 15 minutes tops.
Q. Okay.
A. And that's probably long.
Q. In other words, your estimate might be excessive --
A. Yes.
Q. -- when you say 15.
A. Yes.

Q. You're thinking it's closer to ten minutes.
A. Yes.
Q. Did you see the doctor looking at or examining, touching any other parts of Mr. Broom's body other than his legs and feet?
A. No.
Q. Have you heard or did you hear either after the fact or anytime since that event on September 15 that she was working on the arms or any other part of the body?
A. No.
Q. So what happened next? You're there, you're -- the doc's there, at some point does the doctor leave?
A. Yes, but I believe that occurred -- my recollection is that occurred when I was back in the Equipment Room talking to the director about the fact that we were approaching the point that we needed to do what we had discussed earlier.
Q. So you made -- I think what you're saying is you may have missed the doctor's exit.
A. Yes. I didn't physically see her leave.
Q. But at some point she left the scene I

take it.
A. Yes.
Q. Was she escorted by the nurse Ms. Clagg to your knowledge?
A. To my knowledge, because she wasn't there in conjunction with the doctor.
Q. Did anybody on the -- you or the warden or the director, receive any input from the doctor as to what she observed, what she saw, what her opinions are, anything like that?
A. No.
Q. So I guess I'm trying to understand, you wanted her to come over there to advise, right? Correct?
A. Correct.
Q. That was the thinking on getting her involved in the first place, correct?
A. Uh-huh.
Q. Did she provide any advice to anybody?
A. To the medical team members.
Q. Did she provide advice to them?
A. I can't testify to that.
Q. Did you observe her doing that, her providing advice?

A. No. I observed her kneeling beside medical Team Member No. 9. Couldn't hear her.
Q. So as to what interaction she may have had with team members in the holding cell, the medical team members, you're not able to testify about what if any discussions they were, correct?
A. That's correct.
Q. But as for yourself, you had no communications, no discussions with Dr. Bautista; is that correct?
A. That's correct.
Q. None whatsoever.
A. Yes.
Q. You didn't say a single word to her, correct?
A. Unless my memory fails me, I did not have any discussions with her.
Q. And she did not say a single word to you; is that correct?
A. That's correct.
Q. And did you observe her having a single word with the warden?
A. No, I did not observe that.
Q. And are you aware of whether she had any

communications or discussions with the warden that day?
A. Not aware.
Q. And you've not heard if any of that occurred, correct?
A. That's correct.
Q. And I assume, well, whether she had any communications or discussions with the director do you know whether that happened?
A. I can say with certainty that didn't happen because I was in there. When I left cell front, went back in there, I was in with the director, at the point in time she left. So she couldn't have.
Q. So your testimony is that the director did not have any discussions with the doctor at all that day either, correct?
A. Correct.
Q. Not a one, correct?
A. Correct.
Q. So what happened? You're in there with the director, tell me what your discussions were at that time.
You come back from the cell front, you're

now going in to the director. He's still on the phone, right?
A. Yes.
Q. And what happened?
A. We -- that was about calling the other break to go in and finalize and decide how we were going to proceed to call the execution.
Q. So is that what happened in the Equipment Room at that time; you and the director said let's take another break?
A. Yeah. And the Assistant Director Moore.
Q. Do you know what if anything was told to the Governor or his office at that time?
A. No, I do not.
Q. But the director would have had those communications, correct?
A. Yes.
Q. Did he hang up that phone at the time and then join you in J1, is that what happened?
A. I actually think we agreed that it was time, and if I remember right, I exited, instructed the warden, and he joined. Director joined us sometime shortly after that back in J1 again.
Q. So how long after the doctor had left the

scene and gone back through J1 back to the medical infirmary where the doctor would normally work, how long after that did the medical team stop working? If you know.
A. Again just keeping the timeline in my head based on when I thought she got there and how long it was after we started, I want to say another five, ten minutes stops, and we're now at the end of that second period where we called it.
Q. So you do think there was a period of time after the doctor left where the medical members continued to work on trying to establish venous access.
A. Yes.
Q. But as to what they were doing and where and all that.
A. That I don't know.
Q. So you took the break. Who announced the break to the folks in the room, in the holding cell room?
A. I don't recall.
Q. Did you do that?
A. I don't recall that specifically.
Q. At this point in time up to the time when

the second break was announced and taken, what were your observations of Mr. Broom?
A. He was starting to show signs of being irritable with the team whereas before he had been very compliant. Very cooperative. Even to the point of assisting them.
And that was all factored into that decision-making process in terms of his level of comfort as well as reasonability of achieving venous access, the team members.
Q. Tell me if you would what you saw, what you observed that led you to conclude that he was being irritable and appeared to be uncomfortable. What did you see?
A. Just inflection of his voice, the facial expressions that he was displaying. He appeared to be getting -- he was tired of it.
Q. Did he say anything at all that you can recall?
A. Nothing that -- no, not specifically, nothing that sticks in my memory, no.
Q. Did he express emotions in any way, yelling, shouting, tears, anything that you observed?
A. Yeah, earlier on, and again seems like it

was in the first session that he kind of covered up his face. It almost appeared to me that he didn't want to be viewed on the camera any longer.
Q. What was he doing, was he crying at that time?
A. Yes.
Q. And that is your best recollection is that was during that first period before the first break.
A. Yes, that's my recollection.
Q. And from your perspective anyway the arm over the eyes was kind of an attempt to shield his tears from the people who might be watching.
A. That was my assessment.
Q. That's all I'm asking.
A. Yep. I didn't ask him that but that's what it appeared to me.
Q. Was that the only time during that two hour period before the thing was actually called that you observed him crying?
A. Yes, that I -- yes, in terms of crying, yes.
Q. Did you ever see an inmate cry before in the holding cell? Before an execution? During

venous access?
A. Not during venous access. I've seen inmates cry at cell front on more than one occasion. Typically during visits.
Q. I'm talking about once the warrant has been read and the process has started have you ever seen anyone cry before during the process?
A. No.
Q. Was Mr. Broom to your observation throughout the entire time of the events of that day cooperative?
A. Yes. Until, as I've testified already, toward the end he was starting to -- I would still even characterize him as cooperative. I think had we decided to continue, he would have been cooperative. But he was getting frustrated, as were the team members.
Q. So the second break was taken; is that correct?
A. Yes.
Q. And I imagine the security folks stayed with Mr. Broom, right?
A. Yes.
Q. A lawyer still wasn't allowed back to see

him, correct?
A. That's correct. Not at that time.
Q. Not yet, because the process was still going on, right?
A. Right.
Q. So the rules still applied.
A. Correct.
Q. If she wanted to see, she had to watch from the witness room.
A. That's correct.
Q. The decision makers convened in J1 again, correct?
A. Yes.
Q. That would have been yourself, the director, and the warden, correct? At least those three.
A. And the assistant director and Mr. Stout.
Q. Anyone else?
A. No.
Q. What about the team leader? Was he sort of back and forth like you said before?
A. Yeah, because the team members all went down again into the letter J area. I went down briefly just to try to reassure them. I was getting

the sense that they -- they take a great deal of pride in what they do.
Q. The medical team.
A. The medical team members. I was getting the sense that they felt as if they let us, the brass, down. And I wanted to reassure them that that was not the case.
Q. Did you do that during the second break?
A. Yes.
Q. Could you recall for us what you said to them in that respect?
A. I can't quote, but I think I tried to keep it informal; look, guys, you did the best you could, you guys are good at what you do, you just had crummy veins. For whatever reason today we didn't get veins on Broom.
Q. Okay.
A. I just tried to in terms of leadership dealing with folks I use the analogy all the time talk about the elephant in the room. That was the elephant in the room.
We didn't get veins on Broom. The team did their level best and I wanted -- and then it was reiterated by the director, the assistant director,

all of us reiterated that. But I had that conversation with them to try to reassure them that they didn't let us down.

Q. Recite for us if you could the discussions between the brass, so to speak, about what was going to happen. Tell me your -- if you could testify as to what those discussions were during that second break.

A. Well, at the resumption of the -- when we started the second period, I wasn't there for it but based on what communication I was getting from the director when we called the second break, it was clear that he had been on the phone having some discussions about what if we get to this point, with the Governor's Office.

Assistant Director Moore had obviously had discussions of a similar nature with the Attorney General's Office because they were doing most of the talking about here's what we're going to have to do.

Q. So is it your understanding or belief that during the second period some of those discussions had already begun between the director and the Governor's Office on the one hand and between Mr. Moore and the AG's Office on the other hand about

we may not be able to get this done today, what are we going to do?

A. Yes. But I can't testify about that directly. It's just based on the communication once we call that second break, my perception was those conversations took place in the Equipment Room and I wasn't there.

Q. And they had already happened, those conversations.

A. Yes.

Q. By the time the second break was called.

A. Yes.

Q. So they had already sort of been discussing we may need a reprieve, that type of a thing.

A. Right.

Q. So you get to the second break. The director is there, correct?

A. Yes.

Q. Physically comes into J1.

A. Yes.

Q. The warden is there, correct?

A. Yes.

Q. You were present and the other people

that you've talked about before were present. I'd like to have you testify about what discussions you had at that point in time. Who said what and what decision was ultimately made?

A. The director to my recollection spoke up and talked about the fact that the Governor was ready or prepared to issue a reprieve to give us the opportunity to assess what or how we would proceed since we were unable to achieve venous access on Broom that day.

And then it seems like Mr. Moore spoke up about -- I got the impression once again that Mr. Moore had communicated that already to the Attorney General's Office because there was some discussion about the fact that the Attorney General's Office was on board with that.

And then we began discussing the immediate issue of getting -- having the visitors exit, going ahead and getting them out of the Death House, developing the director's briefing statement, if you will, for the media, and then trying to figure out what we were going to do with Broom.

There was discussion about are we going to send him back to OSP, try to keep him here. We

don't know how long the reprieve is going to be or what our next avenue is going to be. So there was discussion about his status and where he would reside.

And that's when the decision was made to take him to the infirmary for that time to get him out of the Death House.

Q. When was the decision made that we're going to stop the process that day? Was it made before the break or during the break? That second break.

A. No, it was made during that second break.

Q. And who made that decision?

A. Again a collaborative one, but the director ultimately made that decision.

Q. Was the medical team consulted during that second break about whether they thought they could continue and any of those types of things?

A. Yes.

Q. Did those consultations with the medical team occur in your presence?

A. Yes, at least part of them.

Q. And the director, was he present for those?

Page 214

A. Yes.
Q. Was the warden present for those?
A. I believe so, yes. I believe he was like up on the steps.
Q. Can you tell me what you can recall about those consultations?
A. I can just remember then the medical team members, that was when they specifically said director, even if we was to continue, then it seemed that they unanimously agreed that even if they was to continue and achieve a vein, they were not confident enough to start the execution process that the veins would hold. They would remain continent.
Q. Did anybody on the medical team express the view that we could continue and could potentially get a vein and we should continue, anything of that nature?
A. Not "should continue." It seems like again it was my perception that it was out of their desire to do what they do. Nobody wants to quit. But I thought they were all being reasonable about they seemed to be acquiescing that they just weren't going to get usable veins.
Q. I guess what I'm trying to get a handle

Page 215

on, did any of them, any of the three, No. 9, No. 17, or No. 21, express the view that yeah, we can continue, we can, we're willing to keep trying?
Did any of them do that during that second break?
A. No, that's not my recollection at all. They seemed, at least my perception was they seemed to be acquiescing that they, A, either weren't going to get them or, B, even if they would achieve, they weren't confident that they would remain continent.
Q. When you say acquiescing, they were accepting the circumstances?
A. Right. They didn't like it but it was reality.
Q. As opposed to acquiescing in someone else's directive that they weren't going to continue.
A. Yeah.
Q. They were expressing the opinion we're not going to be able to do it today. Accepting the circumstances.
A. Yes.
Q. So the decision then at that point was made by the director based on the input you've described to call a halt for that day; is that

Page 216

correct?
A. Uh-huh.
Q. Is that reflected in the timeline? If you take a look at the timeline as to where you believe this process or this conversation is reflected if anywhere?
A. Would have been as you see Director Collins is consulting with Attorney General's Office and the Governor's Office. He's now, at 4:07 he's now back in the Equipment Room advising them of what we've just discussed.
And then when the media is cleared to exit the Death House, that's -- they've now started evacuating the witnesses from the Death House.
Q. So is it fair to say or accurate to say that when the media was cleared to exit the Death House at 4:16 that the determination had already been made by that point that the process was not going to go forward that day?
A. Yes, that's accurate.
Q. And we see here if you look at 4:22, the Governor's Office has issued a warrant of reprieve. Do you see that?
A. Yes.

Page 217

Q. That's seven minutes later. Is it your testimony that the reprieve, the decision to issue the reprieve was made sometime before that entry?
A. Yes.
Q. At 4:24.
A. Yes.
Q. And is it accurate based on your understanding of the events to believe that it would have been in that 4:07 time frame where the director is meeting with the team that the decision to stop the process was made then or was it made before then?
See where I'm referring, Mr. Voorhies? 4:07 p.m. Director Collins is meeting with the team looks like right after he consulted with the AG and the Governor's Office.
Is it your recollection that it would have been during that meeting, the 4:07 time frame, that the decision was made to stop, or did that decision get made even before that time?
A. Well, I would say that's the time frame where the decision was finalized, yes.
Q. But you think it may have been, what?
A. After 4:07 and when you see the media leaving the Death House, the decision was definitely

final then.
Q. Does it show here on the timeline to your knowledge when the second break was called? I just want to get your sense of where it might be in the timeline.
A. Yeah, the last, 3:48 the inmate is now sitting on the edge of the bed. The team has exited the cell and the door is secured.
Q. So is it your belief that is the point in time when the medical folks were called out of the cell leaving only some security people?
A. Yes.
Q. And the second break began.
A. Goes on to say team leader is in the cell talking with Inmate Broom. Tells when the team leader left. Takes us up to 4:00 o'clock.
Q. So it was in the 3:48 or so time frame that the second break was called, correct?
A. Yes.
Q. And there would have been no further attempts made on Mr. Broom after that?
A. That's correct.
Q. So the process then from the time the warrant was read at approximately 2:00 in the

afternoon till that second break is called we've been through approximately an hour and 50 minutes roughly; is that correct?
A. Yes. If you factor in the breaks.
Q. Including the breaks, obviously that includes the entire time from the time --
A. That's correct.
Q. During the consultation with the team I take it Mr. Miller would not have been present for those again; is that right?
A. Correct.
Q. So whatever information he's recording about the director meeting with the team, he's recording that I guess because he knows perhaps the director told him he's going to meet with the team, but he's not there.
A. That's correct.
Q. But he's documenting for the timeline the meeting is evidently happening at that point, correct?
A. Agreed.
Q. During those consultations with the team were there discussions at all about seven days or 60 days or how long of a delay would be necessary in

view of what they had encountered that day?
A. Yeah, if memory serves, but I think they were generalized because I don't think -- I don't recall the director saying that they had specified a time frame as yet. In terms of the length of the reprieve.
And that was the basis of my recollection that we still were up in the air about deciding what we were going to do with Broom because of that undetermined time frame at that point.
Q. Were there medical members suggesting that because of the physical situation they confronted with respect to the veins and the experience they had had that day spending an hour and a half or so trying to get venous access through the peripheral IVs, were opinions expressed by the medical members no matter how long we wait we're still going to have those problems?
A. Yes. But there was also some related discussions about is there any hope that if we make a concentrated effort to make sure that he's properly hydrated would that make a difference. And there was, yeah, that's possible but not a sure thing by any means. Those types of discussions took place,

yes.
Q. As we sit here today maybe two weeks or more, actually I think it's three weeks to the day, right, that the efforts were made on Mr. Broom? This is Tuesday the 6th, this was three Tuesdays ago.
Do you have any knowledge as you sit here today as to why the team was unable to get access to Mr. Broom's veins on that day?
A. None that I can say that definitively. We've had an issue come up since that could have contributed, but I'm certainly no way qualified to make that determination.
Q. What issue is that? Is that the hydration issue?
A. No, the fact that Broom is back on Death Row bragging about the fact that he took a boxful the antihistamines a day leading up to the execution and he was getting Reynolds to do the same thing and soliciting other Death Row inmates to purchase because there's a limit on them, or there was.
So he was telling Reynolds if you want to make sure they don't execute you, you got to take a box of these antihistamines they sell at the commissary ever day and they won't be able to get

your veins.
Q. Who told you that?
A. That was reported by a supervisor and an officer from OSP and has since resulted in the removal of those antihistamines even being sold at the commissary.
Q. Who in particular reported that?
A. The warden.
Q. The warden from OSP?
A. Yes.
Q. And your understanding is that -- what's an antihistamine? Is that like Advil?
A. Cold medicine. Flu, allergy. I think all of them have antihistamine.
Q. So your testimony is that somebody's reported from OSP that Broom has made statements to the effect that he took a lot of antihistamine before September 15.
A. Yes.
Q. And that he was encouraging Reynolds to do the same thing.
A. Because that's what messed up the team.
Q. He was encouraging Reynolds since September 15 or he was doing so before September 15?

A. Since.
Q. Do you have any knowledge as to whether that's just braggadocio, puffing and nonsense or whether it in fact happened?
A. No, all I have is the incident report from OSP.
Q. As to whether Broom actually said this you don't know, right?
A. Correct.
Q. As to whether whatever Broom said is true or not as opposed to maybe puffing and bragging and totally made up, you don't know that either.
A. That's correct.
Q. And has anybody made any effort to determine whether in fact Broom did in fact purchase a lot of antihistamines? I imagine they must have records of that.
A. Yeah, I didn't follow up with the warden on that but I'm sure that has occurred.
Q. But you don't know the results of that if it has occurred?
A. No. But I do know he had confirmed there was purchases going into Death Row that were beyond the normal amount. Because the decision was made to

stop selling it over the counter.
Q. So how does that antihistamine, what does it do? That's like a cold medicine, is that like alcohol?
A. No. They wouldn't sell alcoholic beverage or medicine in a prison.
Q. I wouldn't think so.
So what does an antihistamine do? What affect does it have?
A. Don't know. Don't even know if it would have an effect. But the premise of the warden's decision was he had enough information that -- to lead him to believe that they were misusing the over-the-counter medication, that was the basis of his decision to pull it.
Because whether it was effective or not, they're misusing it, because the report claimed that he was saying you got to take a box a day, which means you got to get all the guys here on Death Row to each get a box because you can only buy one each time you shop.
Q. What's a box? A box of what?
A. I'm assuming, I don't know how many tablets are in a box. You can buy a cold medicine

with 12, 24, 36 tablets. I don't know the size of boxes they were buying.
Q. Is that like cough drops?
A. No, like cold pills. To alleviate -- antihistamine I believe stops your to nose from running. Congestion, watery eyes, that type of stuff.
Q. So there's been some scuttlebutt from OSP that may have been involved.
A. Yes.
Q. And I take it you have no knowledge as to whether or not it impacts venous access or not. True?
A. Correct.
Q. Other than that issue, as we sit here today three weeks out do you have any knowledge or any ideas as to why the team was unable to get access to his veins that day?
A. None.
Q. I understand that sometime today there was a press release made by the Department of Rehabilitation evidently announcing there may be these new considerations given to different ways to get the drugs into the inmates.

Q. Are you aware that that press release has been made?

A. I know they were developing a press release. We were working on it yesterday when the Governor announced the details in his reprieve. But I've been in here. I was not aware it was specifically released today.

Q. That has been in the works then for at least some time. A day or more?

A. Yes. Was when I became aware of the specific development of a press release.

Q. And do you know, were you reviewing drafts of that release or involved in --

A. No.

Q. -- approving it or crafting it or anything like that?

A. No.

Q. Do you have any idea what was going to be addressed in that release? What were you told?

A. That there would be general details about what we're doing. That it would be kept to generalized comments about the fact that we're looking at staying within existing Ohio law to look at a lethal injection either by a drug or combination

of drugs, and that we were exploring delivery -- methods of delivery for that range of options.

Q. Is there anything that would have been addressed in the press release as you understood it different than what we talked about in your testimony earlier today?

In other words, that we haven't missed anything, have we?

A. No. And you wouldn't see the level of specificity in the press release that I've given you today. You asked the right questions today.

Q. Those reporters.

Have you had any communication with any of the prosecutors of any of the courts who have inmates scheduled for executions?

A. No.

Q. Have you ever had those kinds of communications, for example, like the Cuyahoga County Prosecutor or his office?

A. The only communication I've ever had with a prosecutor was incidental in the Ravere case. From Lorain County.

Q. Just tell me if you could what kind of communication.

A. If you recall, that's where the judge was, the Common Pleas judge was allowing the argument to be made that the lethal injection protocol was unconstitutional at the Common Pleas level and we ended up having to do a great deal of discovery for that lawsuit.

And I was -- I went to Lorain to be deposed and testify and had some interactions then. But never about the protocol or discussions about a specific case, I never had that with the prosecutor.

Q. With respect to the day, the 15th, if you would reflect back on that for a moment. In connection with what Mr. Broom went through have you yourself given any thought to whether he experienced any pain that day?

A. Yes, I've given it a great deal of thought. And although I don't think you could deny that he experienced some pain, I tried to put it in context in that I believe we made a reasonable humane effort to administer the lethal injection process.

And in reflecting in hindsight for me I put it in context that when I went in and had ACL surgery, I got horse veins, you could start an IV on me, and I had a new nurse that took six sticks to get

an IV on this side and she had to go get her nurse supervisor to start one on this side. I got eight sticks just going in for surgery.

So you might say that's a rationalization. I prefer to think of it as trying to put it in context.

Yeah, getting stuck with a needle is uncomfortable, but I wasn't uncomfortable to the point that I thought it was cruel in terms of what that nurse was doing to me. Nor do I think what we did was.

Q. Do you have any knowledge as you sit here to know as to how many sticks, quote/unquote, were made on Mr. Broom on September 15?

A. Yes, but only from after-action review, and it's my understanding that he was stuck at least 18 times. That there was I want to say 21, maybe 23 needles drawn but not all used because they drew one and said no, I don't want an 18, I want a 22, so they just disposed of it.

Q. This notion of the number of needles drawn, where did you get that information from?

A. From the team by the needle count they were able to do after the fact.

Q. And the needle count that was performed after the fact said 22 or 23 needles drawn.
A. Correct.
Q. So might be some question as to whether all those 23 or 22 were actually used. But from what you heard from the medical team, 22 or 23 were actually drawn that day and used in some way. Whether they were inserted in Mr. Broom or not you're unclear.
A. That's what was reported to me.
Q. But 22 to 23 were the needles you heard, correct?
A. Yes.
Q. You believe that to be accurate?
A. Yes.
Q. What about this issue though of being in a situation like Mr. Broom on the 15th where not only was he being stuck, but he was being stuck 18, 20, however many times in connection with the process that he believed was going to lead to his death on that day.
Have you given some thought at all either then or since as to how that must have been, that experience must have been for him just as a human

being to go through something like that?
Because that's really different than just being stuck with a needle. Here you got a guy being stuck with needles multiple times but in connection with the process that he was told was going to lead to his death that day.
A. Yes, I've given thought to it.
Q. And what have you concluded or what have you decided based upon those thoughts? If anything.
A. No conclusion. Not trying to be antagonistic with you.
Q. I know.
A. Please don't ever perceive that.
MR. PORTER: I'm sorry, I didn't hear your last words.
THE WITNESS: I was not trying to be antagonistic. I would never do that.
MR. SWEENEY: Said "please don't ever perceive that."
A. To me that's not a lot different than a late filing of an appeal that results in a seven or eight hour delay of the actual implementation of the process. That's excruciating. For the inmate. For everybody. For the victim witnesses.

Q. The late filing of the appeal.
A. Well, the delay that results.
Q. But you'll agree that in those situations that you're describing, a late filed appeal, the warrant had not been read, correct?
A. Correct.
Q. The inmate has not essentially been given up to die, correct?
A. Correct.
Q. And the insertion of the needles hasn't occurred, correct?
A. Correct.
Q. So do you really think those are analogous?
A. Yes.
Q. You do, okay.
You would agree then what happened to Broom, even if it's analogized as you have to a late filed appeal, that that was excruciating.
A. No.
Q. Well, the one you said was excruciating. Didn't you?
A. I don't think I used "excruciating," did I?

Q. Isn't that the word you used? I thought you did.
Do you not concede that what Broom went through would certainly be worse than that? Than just a late filed appeal?
A. Yes.
Q. Here you got something much worse.
A. Yes.
Q. Let me just consult with my colleagues here.
(Off the record.)
Q. Just a couple more that I may have and I think my colleagues may have a few. I think we're down to the end.
So as always, you've always been a very professional guy and I appreciate your professionalism today here too.
The issue of the Governor's Office, do you know or have you been involved with any communications with the Governor's Office, his staff, or the Governor himself, concerning any of these lethal injection alternatives and procedures and practices and protocols that are being considered as part of this evaluation?

Page 234

A. No, I have not.
Q. Do you know if anyone has from the DRC side of the government?
A. Yes. I know that the director had some discussion with the Governor.
Q. Direct discussions with Ted Strickland himself or with his staff, or do you know?
A. I believe both.
Q. That would be discussions post-September 15.
A. That's correct.
Q. Concerning issues like whether we go to a new drug or new access or whether we make changes, all those types of things.
A. That's correct.
Q. Has the Governor -- strike that.
Has the director reported to you on the results of those discussions? Has he given you any information on what he's heard or been told or anything like that?
A. Yes.
Q. Could you tell me what you've heard from the director on those communications with the Governor and his staff?

Page 235

A. I know that the reprieves were coming before they were announced and that we were going to be afforded that time frame that we talked about three hours ago to give us the opportunity to complete our research and any recommendations that might result.
Q. The time frame meaning the end of November?
A. Yes.
Q. So is it your understanding that time frame essentially came from the Governor's Office as opposed to from the director?
A. No. Like I said, the director hasn't pinpointed that time frame. I'm just drawing a connection between the length of which sentences got reprieved and the time frames that we discussed with myself and the chief legal counsel about what we reasonably thought could be achieved in that time frame to try to have something done by the end of November.
Q. And any other -- anything else you've heard either directly from the director or from anybody on his staff concerning the details of the communication with the Governor and his staff,

Page 236

anything else?
A. No.
Q. Nothing else?
Biros, Ken Biros is one of the parties in this case and is scheduled for execution I think December 8. Are you aware of that?
A. Yes. I was thinking it was the 12th.
Q. I think it's the 8th. Sometime in early December, the first half of December is when it's scheduled.
A. Yes.
Q. Do you have any knowledge as to whether the DRC will be in a position on that date to go forward with an execution?
A. I know that's an objective. That if changes are to be made toward existing policy, that any such changes will be through the screening, if you will, that will have to take place with the director and will be approved and ready to implement.
Q. By Mr. Biros' execution.
A. Yes.
Q. Has anyone told you that Biros' execution is something that they want to be able to get done, anything to that effect?

Page 237

A. No. No, that was not discussed.
Q. Was his execution being used as sort of a guideline as to when you'd like to be back ready to go?
A. No.
Q. As you sit here now then I guess I take it you have no knowledge today as to whether or not whatever new procedures, protocols, practices might be implemented, well, those will be ready or not come December 8.
A. That's true. That's a different question than you asked earlier.
Q. How is it different?
A. What I thought you asked me earlier is if I thought they would be ready by the end. But I can't tell you definitively they will be. There's no drop dead point been given.
And if for some reason we're not ready, I have every reason to believe the discussions will ensue to reprieve Biros and allow us more time.
Q. Who's going to decide when you're ready? Do you know who will be making that decision?
A. I'm sure that will be the director in consult with the Governor's Office and the Attorney

General's Office.
Q. You mentioned before that the court would be involved.
A. Well, I'm simply just anticipating that you or your colleagues or somebody else is going to get involved in trying to get ahold of whatever it is we produce at the point that we say here's our new policy that's ready go into effect November 30th, you're going to say I want a copy of that.
Q. Right. And so you're anticipating that the court, either the Federal Court or maybe some other court may have some involvement in making a determination as to whether that policy or procedure is appropriate to go forward with that in view of the litigation and claims that have been made, and the litigation and claims that may be made in the future.
A. That's an assumption on my part.
Q. Would you want -- I guess you're going to need a period of practice I guess and preparation and training; isn't that correct? Particularly if there are changes made to the protocol, right?
A. Yes.
Q. Do you anticipate the protocol will be changed?

A. Do I anticipate that?
Q. Yeah.
A. I anticipate that as a distinct possibility. But I won't speculate on that.
Q. Is it a possibility that the protocol will not be changed at all?
A. That also is a possibility.
Q. The press release today suggests otherwise, doesn't it? Maybe you haven't seen it.
A. Yeah.
Q. Does it not suggest that there's some presentation anyway to make changes to the protocol?
A. If that's what the -- if there's a press release that says that, then it's contrary to what I was instructed in terms of how we're approaching this.
We're looking at everything from maintaining the protocol, existing protocol to, as I said, looking at different methods of delivery, a single drug, combination of drugs, same drugs, different drugs.
Q. Understood. So obviously if the protocol is not changed in any way, the training will continue, the practicing will continue as it always

does in the weeks and months before an execution, correct?
A. That's correct.
Q. And if the protocol is not changed in any way for Mr. Biros on December 8, Mr. Biros shows up with the same type of venous access issues that Mr. Broom showed up with, there's no reason to expect a different result than what happened with Mr. Broom, correct?
A. Well, no, I wouldn't agree with that.
Q. Why not?
A. Because we've achieved venous access every other time save Mr. Broom.
Q. No, my question was different though.
If Mr. Biros shows up on December 8 and presents the same types of venous access problems that Mr. Broom presented, in other words, you get another guy who for whatever reason has bad veins, there's no reason to expect that there will be a different result on December 8 than there was on September 15, correct?
A. If on December 8 the protocol is unchanged.
Q. Exactly, and that's the premise of the

question.
A. Yes.
Q. So you agree with me, correct?
A. Yes.
Q. And if the protocol changed, you'll agree there's going to be a need for the men and women on the execution team to be trained in whatever the new procedures, practices, and protocols are, correct?
A. Yes.
Q. And if sort of rough timeline for having changes in place is the end of November, that would not give the team sufficient time to prepare for an execution on December 8, would it?
A. If that was the point at which we said it's now time to start training.
Q. Because at some point there's going to be a need to train, correct?
A. Yes.
Q. Particularly --
A. To some degree.
Q. Particularly if you use new instruments such as IO devices or you're going to be doing shots into the arm or if you're going to be using new drugs, correct?

A. Correct. All those require very minimal training.
Q. Is that true? That's your belief?
A. The paramedics are already -- paramedics get certified and go through classes to use IO.
Q. But if you do that you have to actually be right at the bedside visible to the witnesses, right?
A. Yes. And all those provisions are being factored into our discussion.
Q. What would be done about that issue if you use one of those methods?
A. Nothing's been decided other than to say we have had discussions about potentially having to change how and where we administer the drugs.
Q. One other thing on the IO, with the IO the bone is pierced, is that the right terminology, would you agree? Maybe it's a lay terminology but the bone gets pierced by the device, correct?
A. That's correct.
Q. And then is the device removed, correct?
A. Yes, and then the portal --
Q. There's a portal that's inserted; is that right?

A. And literally will have an end on it just like the IV that's inserted in the arm, it's got a cannula that you can connect IV tubes. It's got the rubber end on it that you can manually insert injections.
Q. Is that how it's done?
A. Yes.
Q. There would be some portal that would be --
A. Yes. And that's common to all of the devices regardless of which one you use.
Q. Which type of IO device.
A. Yes.
Q. But would you have a portal affixed to the body and drugs administered through the portal?
A. Yes, that's correct.
Q. In the discussions you're having would they be administered from a distance then or from the bedside?
A. At the bedside.
Q. Directly via a syringe or some other method?
A. We've not finalized that.
Q. Is it your thinking it would be through a

syringe though?
A. Yes.
MR. SWEENEY: Those are all the questions I have. My colleagues may have some, but I appreciate your patience today and your testimony. Thank you.

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EXAMINATION

BY MR. BOHNERT:
Q. Good afternoon, sir, my name is Allen Bohnert. I'm with the Federal Defender's Office. We appreciate your time here and your candidness and forthrightness. I promise I will be very brief. Famous last words from attorneys, I realize.
We have testimony that at some point the members of the execution team changed what they were wearing. Do you know anything about that?
They changed out of gray shirts into white shirts for the entire security team as opposed to just what I understand the ranking officers wear white.
A. That always occurs.
Q. Explain to me just if you could a little bit about that because that's the first time we've

learned about that.
A. It's done just to eliminate the standard officer's uniform or supervisory uniform. In the prison rank structure inmates and staff alike will use the term "white shirts." If you say "white shirt," you're talking about a supervisor, a lieutenant or a captain.
For the sake of uniformity and not being able to delineate who's a correction officer, who's a lieutenant, who's a captain, they all wear the white uniform shirt with no rank insignia, no identifier.
Q. At what point, I guess kind of describe for me a little bit when are they in the room in the gray and white depending and when do they exit and then come back in all dressed?
A. No, that happens before the process ever starts.
Q. So that when they -- go ahead.
A. The morning of when we start the process, normally they're scheduled for 10:00 o'clock. The execution.
Q. Right.
A. The officers seated in there that early morning for cell front visits, they may still be in

Page 246

gray shirts, their uniform shirt. But when we're ready to initiate the preparatory process and the execution process, everybody involved will convert to the plain white shirt.
Q. So at the point when the warden reads the death warrant.
A. They're all in the white shirts.
Q. Do you remember what the three medical team members were wearing, No. 11, No. 9. I think you said No. 9 was wearing scrubs?
A. Yes, seems like one had scrubs and I believe both of the other medical team members had white jackets.
Q. Like a long like knee length white coat?
A. No, just above the knee like a doctor's jacket.
Q. You testified earlier about you went to have an ACL surgery and you had IV established.
A. Yes.
Q. You said it took approximately eight sticks to do that.
A. Yes.
Q. I'm just curious, did the nurse you said was working on you that was just a single stick in,

Page 247

can't get it, pull back out, right in, so that happened; is that correct?
A. Yes.
Q. So that happened eight times like that.
A. Six on this arm and two on this one.
Q. At any point did that nurse insert the needle and while she was in it, in the puncture hole withdraw the needle but only part way and then change angle and jab in a different direction?
A. Yes.
Q. While still in the same hole?
A. Yes. She manipulated the needle on more than one occasion inside of the vein.
Q. You said "on more than one occasion," like describe that I guess for me.
A. I think like three times out of the six that she did on this arm she would start it and then seem to be changing the angle manipulating that as she was trying to get what I now have known them to describe as a flash.
Q. Flashback I think, something like that.
A. Right.
Q. So that happened on you said two or three instances?

Page 248

A. Yes.
Q. Where she was in the hole, moved the needle around to try a different direction?
A. Yes, that's correct.
Q. Would it be -- I guess try to set the scene for me a little bit. While an inmate is visiting with his or her attorney in the holding cell, you picture where I'm talking about?
A. Uh-huh.
Q. Would it be accurate to say there's not really privacy for the attorney to communicate completely privately with his or her client in the holding cell?
A. Yes, that's accurate. Because of the presence of the team members.
Q. So that team member who's present, you're referring to the person who's entering data on the timeline; is that correct?
A. Well, that person would be there but there will always be at least two other team members that have to maintain constant observation of the offender.
Q. Have there been any consideration given to concerns over confidentiality of attorney/client

Page 249

communications in that context?
A. Yes, consideration has been given. I will tell you that I believe we've achieved a proper balance between legitimate security interests and those kinds of concerns.
Q. Have you in the recent pass here I guess dating back to the implementation of the May 14, 2009 policy have you had any reason to be concerned about the security of the attorney in that situation? During a visitation with the attorney and the inmate?
A. No.
Q. So there's never been any actions or behavior from the inmate during that period of time that I'm talking about?
A. In terms of aggression toward the attorney?
Q. Correct.
A. No.
Q. So would it be fair and accurate then to say there that the person who is sitting in the terminal entering data on the timeline is within three feet of the attorney and the client as they're communicating, would that be accurate?
A. Three to four depending on where the

attorney has the chair situated by the cell.
Q. And not anywhere else that the attorney could go, right? I mean the attorney would not be able to keep scooting the chair down further and further, right?
A. That's correct.
Q. So would it also be fair to say at that point that person, at least that security officer at the terminal is certainly within earshot and able to clearly hear what is being said back and forth between the attorney and the inmate?
A. Yes.
Q. And would it also be fair to say that whatever that security officer overhears is then directly entered into the timeline?
A. No, that would not be fair to say.
Q. So it would not be fair to say there are entries in the timeline directly reflecting communications that are occurring between the inmate and the attorney; is that what you're saying?
A. No, I misunderstood your question then. I thought you were talking about directly entering he's telling him specifics. Yes, I think you'll see entries about Broom's attorney's at cell front and

they're discussing, some general statement.
Q. But would it be proper in your view if the person sitting there was entering information on the timeline that dealt with specific contents of communications between the attorney and the client?
A. It's certainly an issue that I would want to look at in terms of an action review.
Q. Why?
A. Just to make sure that they're not entering too much detail.
Q. So to your knowledge has any after-action review taken place regarding the contents of the communications between Mr. Broom and his attorney that are actually reflected on the timeline from the Broom execution attempt?
A. Not to my knowledge, but my efforts have been focused elsewhere since then.
Q. Certainly. I appreciate that. But I guess my question relates to what kind of privacy of communications there is between the inmate and his or her attorney, and it sounds like you're saying there's essentially not any real genuine privacy between for those communications.
A. Not at cell front. What I would tell you

is where I've seen those discussions take place when they want to have that is the night before when the attorney and/or family members, I've had several attorneys want to go over to visit in J1 because it is there that we secure them to the table and then the team members back off so they are pretty much out of earshot and there's more privacy afforded over there.
Q. But not at cell front.
A. That's correct.
Q. As you testified.
Now the timeline says that Broom was requesting his attorney to witness; is that correct?
A. That's correct.
Q. But that's not exactly correct, is it?
A. Yes, it is. In that he previously did not want any witnesses.
Q. Correct. But the testimony we have from several different depositions at this point is that Mr. Broom requested to speak with his attorney, correct?
A. Yes.
Q. And would you agree that that's substantially different although even slightly

different wording that that is requesting to speak with one's attorney is substantially different than requesting that his attorney witness --
A. Agreed.
Q. -- on the monitors, correct?
A. Agreed.
Q. And to your knowledge if I'm correct here, that request to speak to counsel was denied, correct?
A. That's correct.
Q. The conversations with you and Director Collins and Assistant Director Moore and the brass at some point were held in the Equipment Room; is that correct?
A. Brief, yes.
Q. And at that point Captain Miller was still in the Equipment Room, correct?
A. Yes, but I also recall him because it's got a potentially -- his phone's got a -- he can step outside of the door. So, yes. But it doesn't mean he was in there the whole time.
Q. But those conversations don't appear in the timeline, correct?
A. Correct.

Q. Why would that not appear in the timeline?
A. Don't believe they need to be.
Q. So I guess what I'm hearing is that conversations between an inmate and his client are material for the timeline, correct?
A. Yes.
Q. But that the conversations between the brass are not.
A. I see similar general entries on the timeline. Director talking with Mr. Voorhies and the warden, those similar type of generalized entries are on there.
Q. But in this instance those conversations are not memorialized in the timeline.
A. Agreed.
Q. You mentioned on a couple different occasions and we've heard testimony from others to the same effect that Broom was, I don't want to use -- I don't want to put words in your mouth, but that he was comfortable and compliant; Is that accurate that's what your testimony was previously?
A. That's accurate.
Q. And that he wanted to go forward,

correct?
A. That's correct.
Q. Was there any contemplation or discussion that he was compliant because he just wanted it to be over to be put out of his misery as he was laying there being subjected to repeated attempts? Was there any consideration given to that fact?
A. No, nor did I ever have any inclination that that was his position or his feeling at the time.
Q. Was he ever asked?
A. Yes. I talked to him directly at one point.
Q. And he denied ever being in pain?
A. No, but he denied, he declined my first offer for a break.
Q. But that's not my question. I mean I guess it gets to the question, but my understanding is that there was no break desired on his part because he wanted it to be over, not because he was trying to be helpful I guess or because it was no big deal.
A. I can't respond to that. That was not my impression from him at all.

Q. When Rosie Clagg became involved regarding the doctor issue, there seem to be some confusion as to what Nurse Clagg actually did. I just want to clarify.
Did she ever go to the holding cell initially by herself to assess the situation before she went and contacted the doctor?
A. Not to my recollection.
Q. Do you know if she did not do that? Or you just don't know.
A. I recall her being in that hallway but I don't recall, I've never seen her do an assessment or put hands on or any of that.
Q. Was the suggestion ever made we don't need to bring in another medical person, we've already got a medical person here, because Rosie's a nurse, right?
A. Correct.
Q. So was that ever considered I guess -- as I understand it you're the genesis of the idea, right?
A. Yes.
Q. Did you ever consider, well, why don't we have our medical person who's currently here go

assess?
A. No.
Q. There may not be an answer but I'm just curious why not?
A. Can't answer that. At the time I thought we may benefit by getting the physician if the physician was willing to give us some advice.
Q. Why the physician as opposed to the nurse?
A. Can't answer that for you. That was my thinking at the time.
Q. But your immediate thought was not a medical person, it was let's get a doctor, correct?
A. Yes.
Q. Do you remember if anybody said anything as Dr. Bautista was approaching the holding cell about the head nurse or anything, any description given or anything said to that nature?
A. No.
Q. But you weren't right there, correct?
A. That's correct.
Q. In regards to the IO issue, I know we've kind of touched on that in various instances. I'm just curious, you had mentioned you talked to

Page 258

paramedics and some others in regard to their experiences with IO. Correct?
A. Yes.
Q. And I'm just wondering if you've talked with anyone who is on the recipient end of an IO procedure.
A. No, I have not.
Q. So you don't have firsthand knowledge of -- I guess not firsthand knowledge but you don't have firsthand confirmation of whether or not there is pain of some degree associated with that procedure, correct?
A. That's correct.
Q. There's been a lot of developments here in the last three weeks, obviously.
A. Yes.
Q. To say the least.
Including certainly stuff that has developed at least officially, formally, publicly over the last 48 hours, correct?
A. Correct.
Q. Due to your position you've been privy to a lot of these conversations. Would that be accurate?

Page 259

A. That's correct.
Q. Has there been or have there been any discussions or considerations, anything raised about the implications legally regarding litigation or anything like that, has that ever been a part of any of these conversations?
A. Yes.
Q. Flush that out a little bit for me.
MR. WILLE: I'll tell you at this point if the question is directed as to whether he has consulted with his attorneys or he knows of other persons who were defendants who have consulted with their attorneys as to possible implications in pending litigation, that's clearly within the attorney/client privilege.
Q. Let me rephrase, because that's not the intent of my question.
My question is has there been any discussion of, for example, to use an example, would this restart a statute of limitations for people on the Row?
MR. WILLE: I think again that would be to the extent that that might be a possible concern with respect to the impact on the litigation, that

Page 260

would be something within the attorney/client privilege.
MR. BOHNERT: But this litigation is the people that may need after statute of limitations proceeding have already been taken care of, so I don't think that's a concern at this point on this litigation.
MR. WILLE: That may be your opinion but again with respect to whether what impact if any a particular action might have on litigation if one consults with one's attorney, that sounds like that's clearly within attorney/client privilege.
If you talk with your attorney as to what impact if any something is having on pending litigation of which you're a defendant, that's certainly something that people consult their attorneys about.
MR. BOHNERT: I'm not talking about pending litigation, I'm talking about was there contemplation -- perhaps I should rephrase.
BY MR. BOHNERT:
Q. Is there any contemplation or avoidance of a future litigation that is not currently pending, anything about avoiding future litigation?

Page 261

A. Yes.
Q. I guess kind of flush out for me a little bit what was said.
A. There was generalized discussion, this is not a new issue.
Q. Right.
A. There was generalized discussion, at least the ones I've been part of. I'm sure there have been other discussions between our legal counsel and the Attorney General's Office and I don't know who else.
But discussions that I was privy to were focused around the existing debate that is out there that a movement to a single drug protocol has been hinted at by the courts as I believe in the Morales case the judge even made it part of his decision that movement towards a single drug protocol of pentobarbital takes the whole legal argument out of the second and third drug.
But then he qualified what he wanted to say there by saying it's not the court's bailiwick to tell the state how to do it. And that was the context of conversation.
Q. Were there any conversations between you

and the director or Mr. Moore to the effect that any changes might retrigger a new statute of limitations for people on Death Row currently who are not part of any pending litigation?

A. I've not been a part of any of that conversation.

Q. With anybody.

A. With anybody.

Q. So there -- would it be accurate to say there has never been any discussion about not doing something for fear of generating future litigation?

A. No, quite the contrary. I can tell you this unequivocally for the things I've been a part of, the thinking and the motivation that's been shared with me and that I have actively participated in, the reason I take this as serious as do I in terms of my own research is believing that if we're going to do this, let's make sure we're doing it the best way it can be done.

And I would always qualify that sitting in a room full of lawyers by saying I think what we're doing is right.

Q. Okay.

A. But I think there's reason to consider

opportunities for improvement.

Q. I guess that's slightly off from what my question is.

My question is have there been any discussions about not doing something, not changing something so as to avoid --

A. I got on a tangent, forgive me. It was quite the contrary. The thinking that I've been part of or the discussions I've been a part of have been not along the line you're suggesting, more along the line of are there things we can do to improve our existing policy.

And the reality is we're getting litigated anyhow so let's not let the fear, the presence or the lack of litigation influence what we believe to be right. Because we're getting sued anyhow. So take that off the table and let's pursue what is the best current way to do this.

MR. BOHNERT: I think I am out of questions at this point. Mr. Porter may have some. Thank you.

- - -

EXAMINATION

BY MR. PORTER:

Q. Hi, I'm Randall Porter from the State Public Defender's Office. The good news is I may have five or six questions.

A. Okay.

Q. As I understand your testimony from this morning, you all have been looking at other options, for lack of better terminology.

A. Correct.

Q. Have you consulted anyone outside of the Department other than Dr. Dershowitz?

A. No, I have not.

Q. Are you aware of anyone else at DRC that's consulted with anyone outside the Department and maybe the Governor?

A. No.

Q. As I understand the task as it's been laid out by the director is sort of identify the options and place them for him.

Has the director given you any indication of what criteria he'll use for purposes of changing or choosing between the options?

A. No.

Q. Tim asked you a number of questions this morning and you talked about the possibility, and I understand it's not how your investigation's currently premised but some possibility and at least discussed earlier about public comment on a new policy; is that correct?

A. Yes.

Q. Can you tell me very briefly of why that was considered or still being considered?

A. Why it was considered was I wasn't part of those discussions, only in after the fact. But I believe discussions at a level above mine have occurred about do we just act upon the law which gives us the authority we believe to change our existing protocol?

It just says we got to deliver a lethal injection by a drug or combination of drugs. Or do we go the route of a commission or committee, if you will.

Q. Is there any reason a commission was considered? Or is still being considered?

A. I wasn't part of those conversations.

Q. Sorry, didn't mean to repeat myself. I apologize.

Page 266

A. That's all right.
Q. You referred three or four times in your testimony to, see if I pronounce her name correctly, Ms. Wilburg?
A. Walburn.
Q. What exactly is her role?
A. She's the communications director for our Department. Her role is dealing with the media, both the reporters that have been identified to be able to witness the execution as well as the pool reporters that are confined to the media center. She handles all of their logistical issues starting the day before.
She's the one that when the director's reprieve notice went out yesterday she's the one that fields any and all inquiries from the media about the genesis of those reprieves and all that type of stuff.
Q. You talked about when you initially perceived there might be a problem you left the Equipment Room and went to the cell front?
A. Correct.
Q. Was that your idea or was that someone else's?

Page 267

A. No, that was mine.
Q. I have two questions left I think.
A. Okay.
Q. I think again in response to earlier questions you say you counted the needles, is that correct, that were used that day?
A. I said the medical team would have counted the needles.
Q. Do you know if they saved the needles?
A. No. They're disposed of in a Sharps container and disposed of through our standard biohazardous waste removal process.
Q. I'm going to use the term "investigation." Don't mean to be old-fashioned. We can use the word "study" if you're more comfortable with it.
The study that you've been directed to do now concerning the other options that are available, will that necessarily entail itself trying to identify the problems if any with the efforts to execute Mr. Broom?
A. I'm not sure I understand the question beyond what I've already talked about in that we're exploring other methods of delivery.

Page 268

And if the policy were to be changed, again conceivably there could be a policy change that would theoretically say that we're going to maintain our existing process.
But if intravenous access is not achieved, we are then going to say that our policy includes the ability to move to this method of delivery, whatever that is.
Q. And I guess my final question isn't very articulate, so give me another chance if you would.
A. Okay.
Q. You talked about today that there's a rumor, for lack of a better term, that Mr. Broom had consumed a number of antihistamines.
In your investigation of the various options that could be available if the Department wanted to use them, are you going back in time to looking at what occurred on September 15 to determine if anything in fact occurred that was wrong?
Is my question any better then? If not I can try again.
A. Yes, I'm sure there will be continued after-action review of what occurred on September 15. That's typically confined to the warden and the team.

Page 269

There can be outside involvement in my level or the chief counsel's level, but I would believe that that will occur. Right now my efforts are focused elsewhere.
Q. And this is a related question.
Do you know if anyone has sat down with the individual team members and sort of done a detailed debriefing of each of the individual members?
A. Yes, I know that's been offered to them. Because that's always standard protocol. Yes, I know the medical team members were debriefed. And yes, I know that the warden and legal counsel have met with the team as a whole since September 15. I was not there.
Q. Do you know if the debriefing was ever reduced to writing?
A. I don't know.
MR. PORTER: I think that's all the questions I have.
- - -
FURTHER EXAMINATION
BY MR. SWEENEY:
Q. Who did the debriefs of the medical team

if you know?

A. I was there, and the team leader, the medical team members, and I thought the warden was there toward the end of it.

This all was occurring right after we had closed up the Death House and this was that immediate after-action debriefing with them.

Q. So this was the same day, September 15.

A. Yes.

Q. We've noticed or we've heard testimony no incident reports were requested or prepared in connection with this execution on the 15th of September. Is that your understanding too?

A. Yes.

Q. Do you know why that was not done for Mr. Broom's execution?

A. We didn't start the execution process. What are we going to put on an incident report? We tried to establish venous access and could not.

The timeline captures pretty much everything that would have been on the report and probably more.

Q. When the execution process begins with the reading of the warrant, the lights are dim; is

that correct?

A. No, it's actually fairly light at the cell front. The inmate's cell is lit up normal. The lights insight the Chamber are dimmed already in the Death Chamber, but the inmate's cell lights are reasonably well lit up.

Q. Are they dimmed at all?

A. Yeah, probably so, because the hallway light is out. The lights in the hall are turned down but his cell is still well lit.

Q. Why are the lights in the hallway turned down, do you know why that's done?

A. No.

Q. Has it always been done?

A. Been done every one I've been involved in.

Q. You've never thought to ask why they do that?

A. No.

Q. Is it the solemnity of the process perhaps?

A. Don't know.

Q. Is there some reason in connection with performing the process properly that requires the

lights to be turned off in the hallway?

A. Do not know.

Q. And then the inmate's cell, is it your testimony they are in fact dimmed from the normal lighting to some lower level? Is that what you understand?

A. No, I don't think so. I think it just looks dimmer, the cell lights themselves are I don't think ever dimmed. It's just that it appears dimmer because you go in that hallway and the hallway lights are out.

Q. And they're turned off when, the hallway lights? At what point in time in the process? Before the warrant's read or immediately after?

A. Before.

Q. Seconds before or?

A. Yeah, just before.

Q. How does the warden read the warrant?

A. It's not so dim you can't read. I've done it ten times.

MR. SWEENEY: Those are all the questions I have. Thank you, sir.

MR. BOHNERT: No further questions.

MR. WILLE: I have no questions.

(Signature waived.)
(Deposition concluded at 2:35 p.m.)

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CERTIFICATE

State of Ohio :
: SS:
County of Franklin :

I, Julieanna Hennebert, Notary Public in and for the State of Ohio, duly commissioned and qualified, certify that the within named Edwin C. Voorhies was by me duly sworn to testify to the whole truth in the cause aforesaid; that the testimony was taken down by me in stenotypy in the presence of said witness, afterwards transcribed upon a computer; that the foregoing is a true and correct transcript of the testimony given by said witness taken at the time and place in the foregoing caption specified and completed without adjournment.

I certify that I am not a relative, employee, or attorney of any of the parties hereto, or of any attorney or counsel employed by the parties, or financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal office at Columbus, Ohio, on this 9th day of October, 2009.

____
Julieanna Hennebert, Registered
Professional Reporter, and
Notary Public in and for the
State of Ohio.

My commission expires February 19, 2013.
(JUL-1471)

- - -

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County of Franklin :

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Julieanna Hennebert

Julieanna Hennebert, Registered Professional Reporter, and Notary Public in and for the State of Ohio.

My commission expires February 19, 2013.

(JUL-1471)

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A
abandon (2) 37:24 152:22
abandoning (1) 31:22
abbreviate (1) 49:19
ability (1) 268:7
able (28) 35:5 70:2 73:3 103:23 126:1 127:18 129:5 152:17 155:4,9 158:11,20,22 159:2 163:21 163:24 164:16 182:10 201:5 211:1 215:19 221:24 229:24 236:23 245:9 250:4,9 266:9
abreast (1) 92:19
Absolutely (1) 72:5
absorption (6) 41:11,11 56:12 56:22 57:5,9
abuse (1) 68:11
accepted (1) 8:24
accepting (2) 215:12,19
access (41) 34:22 35:1,5 36:19 37:8 55:14 57:12,18 58:17 60:2,18 98:9 125:19 128:9,24 134:1 135:1 141:16 142:22 156:6,8 157:18 164:18 172:1 195:19 197:1 204:13 205:10 207:1,2 212:9 220:15 221:7 225:12 225:17 234:13 240:6,12,16 268:5 270:19
accident (1) 46:1
accomplish (2) 41:23 42:8
accurate (25) 24:9 32:16 34:10 43:4 51:20 53:18 58:4 83:3 94:12 116:23 117:22 139:3 161:13 216:15 216:20 217:7 230:14 248:10 248:14 249:19 249:23 254:22 254:23 258:24 262:9
accurately (2) 10:3 94:15
achieve (8) 37:4 56:12 128:8 133:24 197:1 212:9 214:11 215:9
achieved (8) 40:21 59:18 71:9 157:18 235:18 240:12 249:3 268:6
achieving (2) 128:24 205:9
ACL (2) 228:22 246:18
acquiescing (4) 214:22 215:8,11 215:15
acquired (1) 45:14
acronyms (1) 26:8
act (2) 117:17 265:13
acting (3) 168:10 169:23 170:12
action (3) 251:7 260:10 274:11
actions (2) 109:24 249:12
actively (3) 82:10 107:7 262:15
activities (1) 190:14
actual (8) 44:9 93:23 100:20 111:15 114:12 126:2 171:3 231:22
add (1) 133:4
addition (1) 12:1
additional (1) 191:7
additions (1) 17:11
address (1) 170:17
addressed (4) 16:6 30:13 226:19 227:4
addresses (4) 87:8 170:4,15 171:2
adjournment ... 274:9
administer (7) 59:18 64:9 65:1 117:6 122:3 228:20 242:15
administered ... 57:23 63:3 64:19 69:3 243:15,18
administering... 25:6
administratio... 58:22
administrativ... 7:9 9:12
administrator... 10:2 92:3 168:10,10
administrator... 92:11
adopted (2) 12:10 20:15
advance (1) 80:22
adverse (1) 87:18
advice (11) 26:5 113:14 157:20 183:8 183:10,20 186:18 200:19 200:21,24 257:7
Advil (1) 222:12
advise (9) 152:15 157:1 167:22 186:1 192:13 196:9 198:5,7 200:13
advising (1) 216:10
advisory (3) 169:11 183:7 184:5
advocated (1) 21:11
advocating (1) 25:14
affect (4) 10:7 147:10 158:17 224:9
affirmatively (... 97:15 169:7
affixed (2) 243:14 274:13
afforded (2) 235:3 252:7
aforesaid (1) 274:6
afternoon (9) 101:3 109:16 150:4,6 159:20 173:15 174:14 219:1 244:10
after-action (5) 54:19 229:15 251:11 268:23 270:7
AG (1) 217:14
aggression (1) 249:15
ago (6) 77:8 126:17 171:8 198:3 221:5 235:4
agree (11) 13:17 122:5 150:8 174:17 232:3,17 240:10 241:3,5 242:18 252:23
agreed (8) 164:20 174:19 203:20 214:10 219:21 253:4,6 254:16
agreeing (1) 171:6
agreement (1) 154:3
AG's (1) 210:24

ahead (5) 113:22 115:16 192:15 212:19 245:18
ahold (1) 238:6
air (1) 220:8
al (2) 1:4,7
alarming (1) 97:21
alcohol (1) 224:4
alcoholic (1) 224:5
alike (1) 245:4
Allen (2) 2:4 244:10
allergy (1) 222:13
alleviate (1) 225:4
allow (1) 237:20
allowed (3) 177:19 178:4 207:24
allowing (2) 171:10 228:2
allows (2) 169:13 170:8
alluded (1) 21:13
alteration (1) 12:1
alternate (3) 52:11 166:2,5
alternative (11) 19:18 30:18 31:4 33:22 54:4 68:22 156:5,18 166:22,24 179:4
alternatives (7) 24:5 28:23 55:7 71:17,21 157:16 233:22
amount (3) 24:19 42:4 223:24
analogized (1) 232:18
analogous (1) 232:14
analogy (4) 117:22 131:5 132:11 209:19
analysis (8) 24:5 34:11 51:5 54:17 59:24 61:5 65:19 77:13
and/or (2) 151:16 252:3
anesthesia (4) 48:1,2,23 49:12
anesthetic (3) 44:9 47:15,21
anesthetics (1) 48:6
anesthetize (2) 48:7 50:2
anesthetized (1) 43:18
angle (2) 247:9,18
ankle (4) 196:10,15,18 198:8
ankles (4) 165:21 166:8,17 197:11
announce (1) 146:13
announced (9) 58:2 146:19,19 146:20 160:16 204:18 205:1 226:5 235:2
announcemen... 101:8 147:11 161:2
announcing (1) 225:22
anonymity (2) 190:10,20
answer (6) 11:9 41:21 56:20 257:3,5 257:10
answers (1) 130:6
antagonistic (2) 231:11,17
antecubital (2) 125:5 180:2
anticipate (4) 98:8 238:23 239:1,3
anticipating (2) 238:4,10
antihistamine ... 222:12,14,17 224:2,8 225:5
antihistamine... 221:17,23 222:5 223:16 268:14
anybody (16) 31:18 39:18 65:14 66:1 146:23 153:3 167:8 185:7 200:7,19 214:14 223:14 235:23 257:15 262:7,8
anytime (1) 199:9
anyway (8) 14:21 58:11 64:15 87:1 94:8,13 206:11 239:12
apologize (1) 265:24
apparent (2) 128:23 129:1
appeal (7) 95:10,11 231:21 232:1,4,19 233:5
appeals (2) 100:15 106:24
appear (8) 130:3 134:9 161:1 180:21 186:9 189:3 253:22 254:1
appearance (1) 188:19
APPEARAN... 2:1
appeared (14) 123:21 126:3,5 126:7 134:2 179:24 190:22 191:1 194:13 194:15 205:13 205:16 206:2 206:17
appears (10) 42:2 94:7 150:5 150:10 154:8 161:20 170:17 174:13,20 272:9
applicable (1) 3:8
applied (4) 33:17 44:19 45:13 208:6
appreciate (5) 89:19 233:16 244:5,12 251:18
approach (2) 86:12 87:22
approached (1) 196:6
approaching (4) 107:11 199:19 239:15 257:16
appropriate (2) 71:10 238:14
approved (2) 146:12 236:19
approving (1) 226:15
approximate (1) 94:16
approximatel... 93:12 107:2 128:15 149:3,6 149:24 150:6 218:24 219:2 246:20
April (1) 8:15
architecture (1) 137:3
area (24) 90:24 99:14 106:16 125:6 136:21,24 137:19 139:5 140:23 141:14 146:2,2 152:1 165:21 167:7 172:9 177:8,20 180:2,3,5 185:3 194:18 208:23
areas (1) 67:5
argue (1) 122:5
argument (2) 228:2 261:18
arm (18) 52:21 56:5 61:3 64:18 97:7,18 124:21,24

125:5,18 136:3 142:1 181:18 206:11 241:23 243:2 247:5,17
arms (7) 42:13 95:21 111:21 138:10 149:5 151:17 199:10
ARMSTRON... 1:21
arrive (5) 90:19 92:22 94:19 109:24 191:14
arrived (11) 93:7,8 94:7 135:8 180:21 181:13 187:13 188:12 192:3 196:11 198:2
arrives (1) 93:4
artery (5) 70:11,12,19 71:5,8
articulate (1) 268:10
Asian (1) 194:15
asked (20) 23:12,13 29:5 52:3 79:10 89:5 91:17 97:13 130:13 138:6 156:23 164:9 169:5 183:2 187:11 227:11 237:12 237:14 255:11 265:1
asking (12) 46:23 73:24 79:10 134:12 135:21 147:23 156:24 162:15 169:4 186:17 193:4 206:15
asleep (1) 66:21
aspect (1) 83:17
assembled (1) 119:17
asserted (1) 164:10
assess (6) 59:18,22 64:6 212:8 256:6 257:1
assessing (4) 25:5 27:17 96:24 142:9
assessment (7) 24:9 25:13 51:20 97:3,24 206:14 256:12
assignment (1) 184:14
assistant (21) 2:5,9,13 6:16,21 8:22 91:11 98:22 108:14 110:13 116:2 116:10 146:7 153:5 163:11 167:9 203:11 208:17 209:24 210:16 253:12
assisted (1) 142:22
assisting (3) 151:7,16 205:6
assists (1) 14:6
associated (5) 17:5 46:8 66:14 67:1 258:11
association (2) 33:11,13
assume (4) 86:3,10 149:18 202:7
assuming (1) 224:23
assumption (2) 173:9 238:17
attached (1) 14:16
attempt (10) 43:7 53:14 117:3 156:16 167:20 171:21 198:7,8 206:12 251:15
attempted (5) 52:13 76:9 88:13 141:17 179:22
attempting (3) 123:14 156:22 171:24
attempts (9) 37:24 40:13,15 130:2 151:17 152:22 197:10 218:21 255:6
attend (1) 9:13
attendance (3) 170:2,7,15
attended (3) 9:19 10:1 89:7
attending (4) 11:12 16:16 170:4,23
attention (1) 139:11
attorney (45) 1:13 2:12,13 36:2 73:15 102:13 105:23 174:6,8 175:1 175:8,22 178:8 178:9,10,12 210:17 212:14 212:15 216:8 237:24 248:7 248:11 249:9 249:10,16,22 250:1,2,3,11 250:20 251:5 251:13,21 252:3,13,20 253:2,3 260:11 260:13 261:10 274:10,11
attorneys (6) 178:4 244:14 252:4 259:11 259:13 260:17
attorney's (1) 250:24
attorney/clien... 248:24 259:15 260:1,12
audio (1) 127:10
audiotape (1) 133:15
augment (1) 19:19
August (2) 6:10 8:15
auspices (1) 54:12
Austin (1) 18:7
authority (5) 18:21 19:14 87:23 92:11 265:14
auto (1) 46:1
available (3) 24:6 267:18 268:16
avenue (2) 2:2 213:2
average (2) 26:17 58:4
avoid (1) 263:6
avoidance (1) 260:22
avoided (1) 45:18
avoiding (1) 260:24
aware (17) 50:6 68:15 155:13 162:19 162:20 175:18 175:21,23 189:17,20 201:24 202:3 226:1,6,10 236:6 264:14
a.m (2) 1:16 107:12

B

B (2) 184:5 215:9
back (83) 10:9 17:7 29:6 30:24 34:19 50:21 75:5 98:14,20 100:4 109:19,20 110:6,9 111:7 114:21 115:14 122:15,19 128:3 133:18 135:2,2 137:18 137:22 141:22 142:3,18 144:17,19 145:7 146:2,13 153:12 156:16 156:22 161:23 162:13,16,21 162:22 165:12 166:16,19 167:4,22 172:18,21

174:14 175:19 178:4,17 180:15 181:10 181:12 184:16 185:17 188:23 192:23 194:18 194:21 195:20 195:22 197:19 199:17 202:12 202:24 203:23 204:1,1 207:24 208:21 212:24 216:10 221:15 228:12 237:3 245:15 247:1 249:7 250:10 252:6 268:17
backwards (1) 93:24
bad (2) 158:1 240:18
bag (5) 125:6,7,20,22 126:20
bailiwick (1) 261:21
balance (2) 46:24 249:4
ball (1) 143:22
barbiturate (4) 27:11 69:4,7,14
based (15) 46:10,13 66:19 67:4 78:20 105:6 126:3 130:1 155:12 204:6 210:11 211:4 215:23 217:7 231:9
basically (4) 43:19 51:19 99:16 118:22
basis (3) 105:6 220:7
224:14
batch (2) 111:10,10
bathroom (1) 167:2
Bautista (5) 190:22 195:9 198:8 201:9 257:16
beard (1) 151:23
becoming (1) 128:23
bed (8) 115:17 123:12 140:24 141:1 149:4 165:20 181:21 218:7
bedside (3) 242:7 243:19,20
began (18) 37:10,13 53:19 54:3,5,16 74:4 94:4 101:5 152:5 172:3,3 174:15,18 181:3 182:11 212:17 218:13
beginning (7) 6:9 17:15 73:8 111:16 121:23 178:12 191:19
begins (10) 93:3 104:21 121:6,16,18 178:3,12,18 189:4 270:23
begun (2) 122:16 210:22
behalf (2) 2:11,16
behavior (1) 249:13
belief (8) 16:5 25:18
79:19 160:15 164:4 210:20 218:9 242:3
believe (52) 10:8 16:18 17:6 26:20,22 35:10 68:8 69:4,11 73:6 74:1 84:16 95:10 96:7 116:13 134:18 135:21 136:2 142:10 144:21 146:1 146:15 158:23 169:9 172:19 176:14 180:11 182:7 187:23 188:21,22 190:23 192:11 199:16 214:3,3 216:5 217:8 224:13 225:5 228:19 230:14 234:8 237:19 246:12 249:3 254:3 261:15 263:16 265:12 265:14 269:3
believed (4) 26:23 40:24 186:22 230:20
believing (1) 262:17
benefit (1) 257:6
best (17) 25:19 60:12 63:5 72:9 77:17,22 78:4 145:11 150:22 157:13 168:6 191:22 206:7 209:13,23 262:19 263:18
better (9)
41:20 45:7 54:19 55:3 130:8 136:23 264:9 268:13 268:20
beverage (1) 224:6
beyond (4) 54:7 135:9 223:23 267:23
biceps (1) 180:5
big (2) 91:5 255:21
binder (1) 94:2
biohazardous ... 267:12
Biros (8) 236:4,4,20,22 237:20 240:5,5 240:15
bit (9) 36:13 76:12 138:9 139:10 244:24 245:13 248:6 259:8 261:3
Blackberry (2) 100:3,5
blew (5) 124:9 127:3 138:13 150:19 150:20
blood (1) 42:11
blow (1) 151:21
blowing (2) 158:8 163:21
blows (1) 151:1
board (2) 102:21 212:16
body (9)
41:4 44:24 51:17 136:1 179:9 197:10 199:6,11 243:15
Bohnert (14) 2:4 4:5 10:11 12:14 14:14 22:19 89:19 244:9,11 260:3 260:18,21 263:19 272:23
bolus (2) 25:6 59:19
bone (16) 37:6 42:9,9,11 42:15,17 46:3 46:8,9,15,20 47:6,14 48:7 242:17,19
bones (1) 46:16
book (1) 38:3
bottle (1) 111:2
box (6) 221:23 224:18 224:20,22,22 224:24
boxes (1) 225:2
boxful (1) 221:16
braggadocio (1) 223:3
bragging (2) 221:16 223:11
brass (4) 209:6 210:5 253:12 254:9
break (94) 5:23 61:13 74:12,14 76:13 134:12 135:22

136:5 142:12
142:12,13,14
142:15 143:1,9
143:18,21,24
144:2,23
146:12,13,16
147:1,13,23
148:5,7,21
149:2,15,22
150:5,11
151:14 152:3
156:13 157:4,9
159:6 161:16
161:16 162:6,8
163:10,15
166:3 167:2,4
167:5,7,11,15
167:24 168:4,7
168:11,19
171:22 173:4
173:20 174:11
174:24 175:18
175:20 176:5
176:17,18,18
203:6,10
204:18,19
205:1 206:9
207:18 209:8
210:8,12 211:5
211:11,17
213:10,10,11
213:12,17
215:5 218:3,13
218:18 219:1
255:16,19
breaks (2)
219:4,5
brief (6)
11:7 107:15,16
195:16 244:13
253:15
briefed (6)
101:10,11 102:1
109:2 169:8
183:5
briefing (2)
107:21 212:20
briefly (2)
208:24 265:8
bring (3)
109:12 169:1
256:15
bringing (2)
176:1 178:22
brittle (1)
46:16
brittleness (1)
158:8
broad (4)
2:6,9 72:6
125:11
broader (3)
14:10 30:17
170:21
broadest (1)
19:14
bromide (3)
31:20 47:12
49:13
Broom (83)
33:9,13,19,20
33:24 34:14
35:4,17 36:16
52:4 53:9
55:16 88:14,16
89:8,10 93:7
94:2,7 103:19
104:12 106:23
110:3 115:7,16
117:24 121:10
122:19 143:4,5
147:3,23,24
148:4,8 151:4
154:7 158:3
159:9 160:3
162:9 163:1,1
174:5,7 175:7
177:8 181:20
185:9,19 205:2
207:9,22
209:16,22
212:10,22
218:15,21
220:9 221:4,15
222:16 223:7
223:10,15
228:13 229:14
230:8,17
232:18 233:3
240:7,8,13,17
251:13,15
252:12,20
254:19 267:21
268:13
Broom's (17)
34:20 52:13
76:9 95:9
99:23 136:1
142:1 151:17
156:6 173:23
179:3 195:23
197:10 199:5
221:8 250:24
270:16
brought (5)
108:19 110:17
112:20 180:22
191:13
bucks (1)
89:18
build (2)
67:14,15
buildup (1)
67:21
burning (1)
47:22
butt (3)
52:19 56:5 61:3
buy (2)
224:20,24
buying (1)
225:2

C

C (8)
1:11 3:6,12,16
4:4 5:1,10
274:5
calf (1)
165:21
call (13)
95:15 101:2
105:24 106:4
106:14 119:19
120:2 137:9
167:22 178:18
203:7 211:5
215:24
called (16)
3:7 45:5 74:16
77:11 128:3
143:21 153:20
197:5 204:9
206:19 210:12
211:11 218:3
218:10,18
219:1
calling (2)
186:16 203:5
calls (1)
100:4
camera (1)
206:3
cameraman (1)
102:4
cameras (1)
102:5
cancer (3)
46:16 67:9,11
candidness (1)
244:12
cannula (1)
243:3
capacity (2)
11:15 169:11
Capital (3)
1:14 2:5,14
captain (20)
113:16,16 114:8
131:17 132:8
132:19 160:14
160:15 161:1
172:24 173:3,7
173:20 174:1,3
189:10,18
245:7,10
253:16
caption (1)
274:8
capture (1)
14:2
captures (1)
270:20
care (6)
40:9 43:2 104:7
168:9,10 260:5
carry (1)
86:15
carrying (1)
171:4
cart (2)
121:3,4
case (20)
1:6 14:11 25:2
28:3 34:21
44:3,11 76:21
76:21 95:9
106:2,20
113:11 116:5
121:8 209:7
227:21 228:10
236:5 261:16
cases (1)
25:24
case-by-case (1)
105:6
catered (1)
104:9
catheter (2)
125:4,19
cause (11)
23:2 24:20
47:21 58:1
59:12 63:3,13
97:11 122:7
127:7 274:6

caused (2) 47:18 126:23
causes (1) 122:24
causing (2) 31:6 48:20
ceasing (1) 32:18
cell (124) 14:6 15:16,17 15:18 96:23 109:18 110:10 114:8,13,24 115:4,5,11,18 116:4 117:3 120:17,23 121:1,4 128:10 128:12,12,22 129:5,12,17 130:5,10,14 133:22 134:13 134:24 135:2,7 135:10 136:9 136:10,20,22 137:7,10,17,22 137:23 139:9 139:20 140:11 141:17,22,24 142:4,19,22 143:12 146:13 146:17 147:10 147:14,18 148:8,24 149:4 150:5 151:4,9 151:14 161:21 161:23 165:12 168:21 172:6 174:14 175:6 177:8,20 178:17,23 180:14,15,19 181:21 182:6 185:8 187:19 187:22 191:1,8 192:7,9,17 194:10,18,20 195:10,22 198:2,12,12 201:4 202:11 202:24 204:19 206:24 207:3 218:8,11,14 245:24 248:8 248:13 250:1 250:24 251:24 252:9 256:5 257:16 266:21 271:3,3,5,10 272:3,8
center (22) 92:15 94:20 99:13 101:16 102:7,19 104:18 114:10 131:12,15,16 131:21,21 133:1,11 160:17,19 161:3,4 173:1 174:2 266:11
Center's (2) 102:18 109:4
central (16) 41:2,12 53:14 53:18 55:8,20 57:3,4,7 60:5 60:17 69:23 70:9 71:1,13 100:4
certain (5) 80:7 89:1 151:5 167:20,24
certainly (7) 221:11 233:4 250:9 251:6,18 258:18 260:16
certainty (1) 202:10
CERTIFICA... 274:1
certified (2) 5:3 242:5
certify (2) 274:5,10
chair (2) 250:1,4
chairs (2) 100:8 146:5
Chamber (11) 9:22 61:21 64:20 110:10 122:2 136:21 137:7 140:19 180:14 271:4,5
chance (4) 93:22 164:17,23 268:10
chances (1) 111:8
change (13) 11:6,24 12:8 17:23 18:2 82:1 87:24 132:17 165:16 242:15 247:8 265:14 268:2
changed (10) 31:19 165:6 238:24 239:6 239:23 240:4 241:5 244:16 244:18 268:1
changes (23) 17:10 19:8 20:3 20:14 21:6 33:1 73:9 74:4 74:17,18,23 77:2 78:23 83:22 85:4 112:12 234:13 236:16,17 238:21 239:12 241:11 262:2
changing (4) 87:16 247:18 263:5 264:22
channeling (1) 30:5
characterize (4) 73:24 74:22 136:19 207:14
characterized ... 42:21
charged (1) 82:4
Charles (1) 2:13
checked (1) 91:2
checklist (3) 14:6,13,20
checklists (1) 14:14
checks (2) 95:24 96:9
chemical (1) 68:5
chest (1) 149:5
chief (12) 17:20 18:5 75:18 80:8 82:9,18 98:23 98:23 99:3,11 235:17 269:2
chloride (2) 47:12 49:14
choice (2) 67:12 86:17
choose (1) 133:7
choosing (1) 264:23
Chuck (3) 12:17 93:21 118:20
chunky (1) 194:16
Circuit (1) 100:16
circulatory (1) 44:16
circumstances... 215:12,20
Civil (1) 3:8
Clagg (32) 168:11,16 172:9 172:15 180:16 180:18 184:1 184:11,14,20 185:22 186:4,6 186:14,17,21 187:11 188:8 192:10,14,20 193:16 194:4 194:10 195:17 196:4,7 198:1 198:6 200:3 256:1,3
claimed (1) 224:17
claims (3) 57:6 238:15,16
clarify (5) 11:9,20 89:10 184:5 256:4
clarifying (1) 176:2
Clark (6) 37:14 52:6 53:20 54:2,6 55:1
Clark's (1) 53:22
classes (1) 242:5
clear (11) 31:23 34:7 71:20 72:5 158:12,14 163:17 167:21 177:16,17 210:13
cleared (4)

120:24 173:23 216:12,16
clearly (5)
20:8 21:16 250:10 259:14 260:12
Cleveland (1)
2:3
client (4)
248:12 249:22 251:5 254:5
close (1)
77:14
closed (2)
112:16 270:6
closer (3)
118:19 179:21 199:1
coat (1)
246:14
code (7)
19:15,20 86:13 86:20,22 87:3 87:8
cold (4)
222:13 224:3,24 225:4
collaborative (...
18:4 143:10 213:14
collapsed (1)
124:9
colleagues (4)
233:9,13 238:5 244:4
collectively (1)
143:13
Collins (5)
18:13 176:24 216:8 217:13 253:12
Columbus (9)
1:15,22 2:6,10 2:15 90:1,12 119:19 274:13
combat (3)
37:8 44:19 71:7
combination (...
19:16,23 20:20 31:7,22 32:1 33:12,14 78:14 86:16 87:4 154:9 226:24 239:20 265:17
combining (1)
49:16
come (23)
50:1 80:4,5,10 89:23 103:4 136:16 139:22 140:2 154:3 168:3 177:3,7 181:10 183:18 184:4,5 193:16 200:13 202:24 221:10 237:9 245:15
comes (6)
40:14 101:8 114:21 137:24 191:9 211:20
comfort (1)
205:9
comfortable (7)
13:13 59:1 94:12 134:10 154:8 254:21 267:15
coming (9)
95:10 114:15 148:14 163:18 173:23 183:7,9 192:8 235:1
command (28)
20:22 91:3,4,7 92:15 94:20 95:1 98:15,21 99:13 109:4 114:10,15,22 131:12,15,16 131:20,21 133:1,11 160:17,19 161:2,3 173:1 174:1 197:19
commander (4)
91:8,17,18 112:8
commence (1)
120:2
comment (12)
82:13 83:2,16 83:20 85:7,7 87:8,19,24 88:4 179:20 265:5
comments (5)
87:14 103:24 104:8,10 226:22
commissary (2)
221:24 222:6
commission (10)
84:12 85:12,14 85:16,21 87:13 88:5 265:18,20 274:18
commissioned...
274:4
committee (2)
84:12 265:18
common (4)
52:21 228:2,4 243:10
commonly (3)
7:15 22:22 37:8
communicate ...
184:11,13 248:11
communicate...
25:10 26:20 132:5 159:5 184:1,7 185:6 212:13
communicates...
113:3
communicatin...
113:7,19 114:9 184:19 249:23
communicatio...
177:23 178:8 186:20 210:11 211:4 227:13 227:20,24 235:24
communicatio...
167:14 178:11 184:22 188:4 201:9 202:1,8 203:16 227:18 233:20 234:23 249:1 250:19 251:5,13,20,23 266:7
comparable (2)
41:12 57:7
compared (1)
69:18
complained (1)
147:4
complete (6)
72:13,16,16 142:12 187:8 235:5
completed (4)
108:4 114:21 156:7 274:9
completely (3)
35:16 39:22 248:12
completes (1)
121:7
complex (2)
90:23 104:20
compliant (4)
154:9 205:5 254:21 255:4
complimentar...
104:8
component (1)
80:13
components (1)
80:10
compound (1)
68:6
computer (3)
114:7 137:9 274:7
concede (1)
233:3
conceivably (2)
56:12 268:2
concentrate (1)
62:15
concentrated (...
26:14 66:24 68:5 220:21
concentration...
67:20
concern (6)
45:20 97:11 158:12,14 259:23 260:6
concerned (4)
35:15 45:20 57:19 249:8
concerning (7)
19:8 68:21 111:20 233:21 234:12 235:23 267:18
concerns (4)
11:9 164:19 248:24 249:5
conclude (1)
205:12
concluded (3)
104:10 231:8 273:2
conclusion (4)
97:10,12 134:4 231:10
conclusions (1)
50:1
concur (1)

145:1
concurred (2) 144:7,24
concurring (1) 145:3
conducted (6) 16:18 18:20 19:22 34:12 169:22 170:10
conferences (1) 111:14
confident (2) 214:11 215:10
confidentialit... 248:24
confined (4) 49:19 65:20 266:11 268:24
confirm (1) 191:24
confirmation (... 258:10
confirmed (2) 186:19 223:22
confronted (2) 152:9 220:13
confusion (1) 256:3
Congestion (1) 225:6
conjunction (1) 200:6
connect (1) 243:3
connected (1) 42:10
connection (25) 11:1 15:6 17:3 20:2 23:14 28:2,2 41:3 45:16 49:23 61:5 68:13,18 69:23 83:21 85:8 95:2,18 126:19 228:13 230:19 231:4 235:15 270:12 271:23
connections (1) 127:16
connector (2) 136:20 137:7
connects (1) 100:9
conscious (2) 43:17 129:4
consciousness ... 67:3
consensus (1) 159:1
consider (10) 14:23 15:8,24 19:16 53:19 156:24 169:4 189:7 256:23 262:24
consideration ... 21:2 24:12 27:6 32:17,22 36:23 37:11 51:21 55:17 61:4 81:21 82:12 248:23 249:2 255:7
consideration... 225:23 259:3
considered (31) 22:6,10,11 25:11 28:24 36:15 52:12 53:1,7 55:9,17 62:1 68:10,16 69:20 74:24 83:23 84:18 85:4 100:16 166:22 179:17 182:20 185:13 233:23 256:19 265:9,9,10,21 265:21
considering (10) 20:2,9 21:17 31:2,9 36:12 36:17,22 74:17 74:18
consistent (1) 162:5
constant (1) 248:21
constituencies... 84:14
constitutional ... 33:7 35:13,14 35:17,22 36:6
consult (7) 38:6,9,12 162:17 233:9 237:24 260:16
consultation (3) 17:19 78:19 219:8
consultations ... 213:20 214:6 219:22
consulted (11) 38:16 39:18 65:14 68:19 142:10 213:16 217:14 259:11 259:12 264:11 264:15
consulting (3) 17:24 168:2 216:8
consults (1) 260:11
consumed (1) 268:14
contacted (1) 256:7
container (1) 267:11
contemplate (1) 90:17
contemplated ... 30:13 36:9
contemplation... 255:3 260:20,22
contents (2) 251:4,12
context (8) 85:10 98:4 107:10 228:19 228:22 229:6 249:1 261:23
continent (3) 124:11 214:13 215:10
contingencies ... 43:5
continuation (1) 29:24
continue (22) 11:2 102:17 131:5 158:11 162:10,17 163:1,2 164:13 164:13,17 207:15 213:18 214:9,11,15,16 214:18 215:3 215:16 239:24 239:24
continued (9) 40:23 52:9 133:24 139:10 142:1 156:8 173:11 204:12 268:22
continues (1) 154:7
continuing (3) 29:18 33:8 72:19
contraindicati... 45:21 46:15
contrary (4) 59:6 239:14 262:12 263:8
contributed (1) 221:11
contribution (1) 29:16
Control (3) 102:17,19 104:18
controls (1) 42:7
convened (1) 208:11
conversation (... 120:12 144:14 155:13 179:23 188:16 192:8,9 195:17 210:2 216:5 261:23 262:6
conversations ... 106:8 187:2,24 188:1 211:6,9 253:11,22 254:5,8,14 258:23 259:6 261:24 265:22
conversely (1) 159:4
convert (2) 101:16 246:3
converted (1) 102:21
convinced (1) 35:16
convoluted (1) 178:15
Cooey (2) 1:4 76:21
cool (1) 149:24
cooling (1) 142:18
cooperative (5) 163:6 205:5 207:11,14,15
copy (2) 12:16 238:9

cordially (1) 117:24
correct (365) 5:16 6:20 7:14 7:16,22,23 8:2 8:3,11,12 9:19 9:23 11:13,16 12:11,12,24 13:1,17,21 15:19 18:11,15 18:22 19:1,3 20:1,15,18,20 20:21,24 21:23 22:2 24:14,17 25:17 26:3,12 30:8,11,14,15 30:20,22 31:14 34:17,18 35:7 35:9 40:3 41:7 49:7,22 52:6,7 52:10 53:3 54:24 55:4,15 56:6 57:10 58:3,5,6,10,14 58:17,18,21 60:6,9,11 61:10,16 62:9 63:13 65:23 66:6,10 67:24 68:10 70:13,14 71:15 72:12,13 72:14 74:19 75:3,10 76:1 76:18 78:7 84:16 85:8,22 86:24 87:6,19 88:7 89:6,8,9 91:2 92:1,24 93:1,5,10 94:10 97:4,22 97:23 99:3,4,6 99:8,9,18 100:18 102:9 104:22 106:19 108:17 109:3,5 109:10,15 110:1,2 113:21 114:4 115:8,19 115:21,22,24 116:2,6,11,12 117:3,4,6,7,9 117:10 119:3 119:24 120:1 121:10,11,15 121:17,23 122:10,13 124:24 127:1,8 127:10,12,17 129:10,11 130:18 131:11 131:13,23 133:13,14,17 133:21 138:1 139:20,21 140:1,20 141:21,23 142:20,23 143:3,5 144:5 145:9,19,22 146:10 148:6,9 148:10 149:7 150:1,12 151:4 151:14,18,19 154:17,24 155:2,18 157:5 157:6,21 159:10,15,16 160:13,18,23 161:10,14 162:4 163:19 163:23 164:1,2 166:14 168:4,8 170:5,10 171:5 173:2 175:13 175:14,17 176:19,22 177:6,9,10,22 177:24 178:1,6 178:13,14 181:8,11,15 185:1,14 187:3 187:9 188:3,7 188:9,10,16,17 189:23 190:15 190:16,18,19 193:14 194:5 194:18 195:11 195:12 197:24 200:14,15,17 201:6,7,10,11 201:15,19,20 202:5,6,17,18 202:19,20 203:16 207:19 208:1,2,7,10 208:12,15 211:18,22 216:1 218:18 218:22 219:3,7 219:11,17,20 223:9,13 225:14 230:3 230:12 232:5,6 232:8,9,11,12 234:11,15 238:20 240:2,3 240:9,21 241:3 241:8,17,24 242:1,19,20,21 243:16 247:2 248:4,18 249:17 250:6 252:10,13,14 252:15,18,21 253:5,7,9,10 253:14,17,23 253:24 254:6 255:1,2 256:18 257:13,20,21 258:2,12,13,20 258:21 259:1 264:10 265:6 266:22 267:6 271:1 274:7
correction (1) 245:9
Correctional (2) 7:13 8:8
corrections (4) 6:24 68:20 86:14,18
correctly (1) 266:3
couched (1) 164:15
cough (1) 225:3
counsel (14) 3:5,14 17:20 78:20 80:8,9 82:9,18 98:24 235:17 253:8 261:9 269:13 274:11
counselor (1) 75:18
counselors (2) 17:20 18:9
counsel's (1) 269:2
count (2) 229:23 230:1
counted (2) 267:5,8
counter (1) 224:1
counting (1) 128:18
country (1) 21:11
County (4) 90:8 227:18,22 274:3
couple (5) 10:6,6 102:3 233:12 254:17
course (3) 66:17 95:14 105:21
court (9) 1:1 73:14 106:21 122:7 123:1 238:2,11 238:11,12
courts (6) 21:13,14 51:2,6 227:14 261:15
court's (1) 261:21
covered (1) 206:1
crafting (1) 226:15
crash (2) 102:18,20
create (1) 50:13
creates (1) 35:11
Crimes (2) 1:14 2:14
criteria (1) 264:22
critical (2) 40:9 43:2
cross (1) 113:5
crude (2) 45:7 124:4
cruel (1) 229:9
crummy (1) 209:15
cry (3) 206:23 207:3,7
crying (4) 138:21 206:4,20 206:21
cue (1) 121:4
curious (3) 246:23 257:4,24
current (11) 6:2 11:7,18 13:3 33:14 35:3

55:12,21 57:11 90:3 263:18
currently (18) 19:17 21:3 24:7 32:19 33:12,17 35:7,20 36:9 36:10,12 47:11 71:12 105:4 256:24 260:23 262:3 265:4
cutdown (2) 71:5,9
Cuyahoga (1) 227:18
cylinder (1) 45:10

D

D (2) 169:21 170:8
dangerous (2) 22:17 46:12
dark (1) 194:13
data (12) 56:14 58:8 59:1 59:1,6 60:10 66:9 114:13 132:18 133:2 248:17 249:21
date (4) 12:23 92:6 122:8 236:13
dating (1) 249:7
day (71) 35:6,7 53:23 88:19,23 89:2 90:15,21 91:7 91:8,19 93:3 93:15 95:8 96:1 98:12,13 99:5 100:1 101:23 102:23 103:19 104:1 104:16 105:21 107:12,24 109:24 113:18 114:19 117:1,5 117:9 119:1 120:6,10 127:24 132:21 133:12 135:4 153:20 154:22 156:11 157:6 164:5 198:13 202:2,17 207:10 212:10 213:9 215:24 216:19 220:1 220:14 221:3,8 221:17,24 224:18 225:18 226:9 228:11 228:15 230:7 230:21 231:6 266:12 267:6 270:8 274:13
days (3) 99:20 219:23,24
dead (2) 64:2 237:17
deadlines (1) 74:3
deal (6) 107:22 124:13 209:1 228:5,16 255:22
dealing (5) 55:1 146:8 185:18 209:19 266:8
dealt (2) 105:14 251:4
death (53) 9:22 20:23 23:2 24:21 27:3 28:7 31:7 40:11 51:19 58:1,1 59:12 59:17 60:9 61:21 63:3,13 64:20 103:5 104:21 106:18 107:23 108:5,8 108:15,17 109:8,21 112:23 113:23 114:20,20 137:3 140:17 140:19 173:24 176:1 212:19 213:7 216:13 216:14,16 217:24 221:15 221:19 223:23 224:19 230:20 231:6 246:6 262:3 270:6 271:5
debate (1) 261:13
debriefed (1) 269:12
debriefing (4) 197:20 269:8,16 270:7
debriefs (1) 269:24
December (9) 236:6,9,9 237:10 240:5 240:15,20,22 241:13
decide (2) 203:6 237:21
decided (9) 32:7,15 87:18 100:23 118:1 143:13 207:15 231:9 242:13
deciding (1) 220:8
decision (38) 31:16,21 73:10 78:22 82:8,15 83:17 85:13 88:5,9 101:2 143:8 152:21 154:14,21,23 163:12 167:19 182:12 190:2 208:11 212:4 213:5,8,13,15 215:22 217:2 217:10,18,19 217:21,24 223:24 224:12 224:15 237:22 261:16
decisions (4) 20:9 21:7 87:14 92:12
decision's (1) 79:14
decision-maki... 86:3,6 205:8
declaration (1) 77:6
declined (1) 255:15
deems (1) 169:2
deep (3) 42:10,12 44:23
defeat (1) 67:20
defeats (1) 112:13
defendant (1) 260:15
defendants (3) 1:8 2:16 259:12
Defender (2) 2:5,7
Defenders (1) 2:9
Defender's (3) 2:4 244:11 264:4
define (1) 27:21
definitely (1) 217:24
definitive (2) 63:14 101:3
definitively (5) 32:10 164:10 173:9 221:9 237:16
degree (4) 47:7 59:2 241:20 258:11
delay (4) 106:20 219:24 231:22 232:2
deletion (1) 12:1
deletions (1) 17:11
delineate (1) 245:9
delineated (1) 170:22
deliver (3) 49:10 64:6 265:16
delivered (6) 40:11 47:2,2,22 56:10 67:19
delivering (3) 35:20 40:22 49:8
delivery (45) 19:18 20:10 30:3,12,19 31:5 33:18,23 34:20,23 36:8 36:14,18 40:9 40:19,24 41:1 41:2 43:1 49:17 52:1,3 52:11,12,22 53:6 54:4 55:10,19,24 65:4,21 68:22

70:7 72:8 74:21 78:15,17 79:15 86:17 227:1,2 239:19 267:24 268:8
demonstratio... 43:22
denied (4) 106:24 253:8 255:14,15
deny (1) 228:17
Department (... 6:3 17:21 39:22 54:11,12 55:19 75:24 83:9,11 83:15 86:14,18 94:3 98:24 225:21 264:12 264:15 266:8 268:16
departments (1) 68:20
Department's ... 74:18
depending (3) 17:23 245:14 249:24
depicted (2) 94:16 137:11
Depo (1) 94:2
deposed (3) 5:15 39:3 228:8
deposes (1) 5:3
deposition (6) 1:10 3:6,13,14 5:12 273:2
depositions (2) 28:1 252:19
depth (1) 42:7
deputy (7) 91:12,16,22,23 92:5,9,13
derivative (1) 67:22
Dershowitz (20) 21:22 23:11,11 23:21 24:18 26:16 28:5 34:12 38:9 50:22,24 59:17 60:10 63:23 66:7 75:7,13 75:20 77:11 264:12
Dershowitz's (1) 78:10
descent (1) 194:15
describe (6) 7:7 13:13 194:11 245:12 247:15,20
described (10) 45:10 79:19 106:16 107:8 109:23 135:10 149:23 151:12 182:19 215:24
describing (1) 232:4
description (2) 136:24 257:17
descriptor (1) 139:3
designed (1) 42:16
desire (1) 214:20
desired (2) 67:16 255:19
desk (2) 100:8,10
destined (1) 140:10
detail (2) 190:4 251:10
detailed (2) 190:14 269:8
details (4) 150:17 226:5,20 235:23
determination... 60:8 82:20 85:19,23 86:2 88:3 216:17 221:12 238:13
determine (5) 59:23 95:20,22 223:15 268:18
determined (3) 42:4 47:17 88:2
develop (1) 87:23
developed (1) 258:19
developing (3) 51:4 212:20 226:3
development (5) 11:5,21,23 16:10 226:11
developments ... 258:14
device (12) 37:23 38:1 39:24 40:20 41:21 42:3,16 45:6,10 242:19 242:21 243:12
devices (10) 37:3 38:7 41:22 45:9,19 52:12 53:7 68:22 241:22 243:11
diagram (1) 137:11
diameter (1) 45:11
dictates (1) 14:11
die (2) 26:17 232:8
difference (3) 13:9 69:10 220:22
different (37) 14:14 19:17 21:2 24:6 30:2 30:4 37:3 47:1 69:7 70:17 84:13,14,14 85:11 102:3 142:13 165:13 190:12,17 225:23 227:5 231:2,20 237:11,13 239:19,21 240:8,14,20 247:9 248:3 252:19,24 253:1,2 254:17
differentiate (1) 13:5
differentiatio... 13:23
differently (2) 87:17 165:11
difficult (1) 163:19
difficulty (2) 128:24 138:11
dig (1) 28:18
dim (2) 270:24 272:19
dimmed (4) 271:4,7 272:4,9
dimmer (2) 272:8,9
direct (4) 9:14 112:24 120:12 234:6
directed (2) 259:10 267:17
direction (8) 26:5 72:3 152:24 176:24 177:11 189:16 247:9 248:3
directive (3) 75:4 177:14 215:16
directives (1) 20:19
directly (12) 8:2 16:19 47:22 95:23 119:16 211:4 235:22 243:21 250:15 250:18,22 255:12
director (168) 6:4,13,17,18,21 6:24 7:5 8:5,22 9:1,6 17:21 18:12,12,13 19:12 20:12 26:21 29:19 31:17,23 54:18 70:6 72:2,18 73:4,6,23 76:6 76:8 78:13,19 79:3,18 80:18 80:20 81:21 82:7,19 86:1 88:20 94:23 98:22,22 99:11 101:6 102:1,24 103:3,9,20 104:23 107:15 108:13,14 110:12,13 111:8 119:4,23 120:7,13,15 127:20,21 129:9,13 130:10 131:7 142:11 143:13 144:9,14,22 145:23 146:7,7

149:1 152:2,7 152:13 153:3,5 153:17 155:7,8 155:21,22 163:1,10 167:9 167:10,17 168:12 169:8 170:22 172:17 172:18 173:4 175:19 176:1,5 176:11,21 177:12,17 180:8 183:4,5 183:22 185:17 186:22 187:18 188:2,9 189:17 192:12,23 193:17,19,23 195:21 198:3 199:18 200:8 202:8,13,15,22 203:1,9,11,15 203:22 208:15 208:17 209:24 209:24 210:12 210:16,22 211:18 212:5 213:15,23 214:9 215:23 216:7 217:9,13 219:13,15 220:4 234:4,17 234:23 235:12 235:13,22 236:19 237:23 253:11,12 254:11 262:1 264:19,21 266:7
director's (4) 146:11 155:12 212:20 266:14
directs (2) 120:24 121:12
dirty (1) 45:24
disagree (2) 121:23 122:17
discovery (1) 228:5
discretion (3) 133:2,5,7
discuss (3) 96:5,6 144:9
discussed (36) 17:23 22:10,11 23:8 25:11 26:9 27:1 63:15 68:19 71:17 75:1,2 82:16 84:7 85:6 110:16 111:7,14 144:3 147:13,17 152:7,10 155:2 155:10,11 157:15 164:16 168:7 185:23 189:4 199:20 216:11 235:16 237:1 265:5
discussing (12) 18:2 19:14 87:15 97:2 101:11 147:21 152:2 155:21 161:15 211:14 212:17 251:1
discussion (49) 12:3 20:7 21:9 21:14 22:24 25:12 26:23 34:3 45:17 62:5,7 72:20 85:11 110:14 111:5 130:8 145:4 153:15 153:23 154:2,4 156:5 157:8 158:2,3 163:5 165:10,18,19 165:23 166:1 166:23 175:24 176:4,8,21 178:21 179:6 180:10 212:15 212:23 213:3 234:5 242:10 255:3 259:19 261:4,7 262:10
discussions (52) 19:8,12 20:3 27:15 49:15,18 49:24 50:15,20 61:23 82:11 110:15,23 111:18 150:14 152:19 153:1 153:17 158:7 188:12 197:4 201:6,9,17 202:1,8,16,22 210:5,7,14,17 210:22 212:2 219:23 220:20 220:24 228:9 234:6,9,18 237:19 242:14 243:17 252:1 259:3 261:9,12 263:5,9 265:11 265:12
disfigured (1) 43:6
display (1) 69:6
displaying (1) 205:16
dispose (1) 111:9
disposed (3) 229:20 267:10 267:11
disrupt (1) 141:5
disseminated (... 73:10,12
dissent (1) 158:19
distance (3) 105:16 118:23 243:18
distinct (1) 239:3
distinction (3) 13:23 28:15 121:24
distinguish (1) 69:12
DISTRICT (2) 1:1,1
DIVISION (1) 1:2
doc (1) 196:4
doctor (30) 168:3 169:4 171:18 178:22 182:13 184:17 184:21 185:10 190:24 191:3,5 191:9 192:12 192:14,20 194:8 195:3 197:6 198:11 199:4,15 200:6 200:8 202:16 203:24 204:2 204:11 256:2,7 257:13
doctor's (2) 199:22 246:15
document (7) 13:14 14:3 15:7 15:10,13 81:14 94:1
documented (2) 96:20 148:21
documenting (... 219:18
doc's (1) 199:14
doing (40) 37:13 38:3 42:8 60:5 71:4 75:9 87:16 96:24 112:12 114:13 122:8 125:6,20 132:9 135:4 151:6,13 154:7 162:10 172:21 172:24 178:24 181:14,16 183:19 188:5 196:8,12 200:23 204:15 206:4 210:18 222:24 226:21 229:10 241:22 262:10,18,22 263:5
Donald (2) 91:10,15
door (19) 102:16,17 115:12 137:19 137:22 140:16 140:17 141:9 179:3 182:5 192:17 193:10 194:1 195:2 196:3,3,4 218:8 253:20
doors (2) 112:11,15
doorway (1) 146:16
dosage (6) 24:19,23 25:16 63:10 66:17,23
dosages (2) 23:7 67:16
dose (32) 21:19,24 22:7 22:12 23:1

24:12,15 25:4 25:21 26:7,10 26:13,18 27:11 28:6,11,12 31:13 34:9 49:21 50:10 58:23 59:7,23 63:2,3,6 64:6,9 64:11 65:12 66:18
doses (1) 67:19
downtime (1) 100:1
Dr (23) 21:22 23:11,21 24:18 26:16 28:5 34:12 38:9 50:22 51:3 60:10 66:7 75:7,13 75:20 77:11 78:10 190:22 195:9 198:8 201:9 257:16 264:12
draft (2) 81:2 82:2
drafted (2) 73:9 81:22
drafting (1) 74:4
drafts (1) 226:13
draw (4) 97:10,12 121:24 134:3
drawing (2) 137:3 235:14
drawn (4) 229:18,22 230:2 230:7
DRC (4) 38:20 234:2 236:13 264:14
dressed (1) 245:15
drew (1) 229:18
drop (3) 125:6,20 237:17
drops (1) 225:3
drug (50) 19:16,17,23 20:20 21:11,16 22:6 23:1,8 24:7 25:14 32:1 33:11,14 36:8 40:19 43:1 47:3,4,23 49:17,21,24 50:10 51:9 57:18 58:23 61:15 63:23 67:12 68:8,9 68:10 72:7 74:20 78:14 86:16 87:3 158:5 159:8,21 160:3 161:5 226:24 234:13 239:20 261:14 261:17,19 265:17
drugs (68) 19:16,18,19,24 20:10,20 21:2 21:3,5,8 30:3,5 31:7,7,23,24 32:1,18,20,20 32:24 34:23 35:20 40:8,10 40:10,22,24 41:1,4,10 46:11,18,21,24 47:11,13,13 50:11,12 51:4 52:22 56:9 57:22 58:20 59:3 78:13,14 78:14,15 79:15 79:15 86:16,17 87:4 112:6 117:6 122:3 158:6 225:24 227:1 239:20 239:20,21 241:24 242:15 243:15 265:17
due (2) 159:21 258:22
duly (3) 5:2 274:4,5
duties (6) 7:6 9:7,10 11:1 90:3 140:9
duty (1) 146:3

E

earlier (14) 66:23 107:8 110:20 164:9 171:23 179:17 199:20 205:24 227:6 237:12 237:14 246:17 265:5 267:4
early (4) 101:3 191:13 236:9 245:23
earnest (1) 75:9
earshot (2) 250:9 252:7
easier (1) 132:17
easily (1) 40:21
East (4) 1:14,21 2:9,14
EASTERN (1) 1:2
edge (2) 58:8 218:7
educating (3) 78:13 79:3,18
Edwin (8) 1:11 3:6,12,16 4:4 5:1,10 274:5
effect (14) 3:15 19:22 28:4 64:10 67:17 111:4 161:4 169:10 222:17 224:11 236:24 238:8 254:19 262:1
effective (6) 12:10,23 13:19 16:11 26:21 224:16
effects (1) 79:11
efficacious (1) 23:6
efficacy (3) 21:19 40:18 79:11
effort (6) 23:14 76:3 164:4 220:21 223:14 228:20
efforts (12) 72:6 128:16 133:24 142:1,9 168:22 171:19 171:21 221:4 251:16 267:20 269:3
eight (6) 30:6 102:2 229:2 231:22 246:20 247:4
either (28) 9:21 10:1 11:14 26:15 27:11 31:17 32:18 37:5 41:15 48:13 74:20 121:2 128:16 145:17 151:16 161:13 168:12 175:6 189:17 197:10 199:8 202:17 215:8 223:12 226:24 230:22 235:22 238:11
elbow (5) 123:15,16 125:5 125:6 180:3
element (1) 14:9
elements (1) 13:7
elephant (2) 209:20,21
eliminate (2) 31:19 245:2
else's (2) 215:16 266:24
emotions (1) 205:22
employed (2) 92:9 274:11
employee (3) 38:20,21 274:10
enacted (1) 88:1
encounter (1) 154:22
encountered (1) 220:1
encountering ... 130:9
encouraging (2) 222:20,23
ended (5) 105:19 148:14 168:19 174:24 228:5
endorsing (1) 59:21

ends (2)
67:12 178:7
end-of-life (2)
22:22 67:7
enemy (1)
105:15
engage (1)
24:4
engaged (2)
75:7 107:7
engaging (1)
85:7
ensue (1)
237:20
ensued (2)
110:14 175:24
entail (1)
267:19
enter (4)
115:4 120:24
133:1,6
entered (10)
108:15,17
133:12 140:11
150:5 191:8
192:14,20,21
250:15
entering (5)
248:17 249:21
250:22 251:3
251:10
entire (6)
112:5 151:11
153:14 207:10
219:6 244:19
entirety (1)
117:8
entrance (1)
141:10
entries (11)
94:11 114:7,9
114:15 174:20
189:7,12
250:18,24
254:10,12
entry (8)
96:23 114:13
132:18 149:13
160:16 173:18
174:1 217:3
envision (1)
118:8
envisioning (2)
81:19 117:18
equates (1)
41:2
equipment (57)
9:14,22 14:19
15:14 57:23
112:13,14
113:9,19
114:22 117:13
117:14 119:2,7
120:14,15,18
120:23 121:3
123:5,11,13
127:9,14 128:5
128:22 129:2,9
129:16 131:18
131:20 132:20
132:22 135:2
136:20 140:23
141:1 144:9,18
145:7 146:11
160:7,10 161:3
172:18 173:10
192:11 193:19
194:9 195:21
199:18 203:8
211:6 216:10
253:13,17
266:21
Ernie (2)
6:16 153:7
escort (1)
113:5
escorted (2)
104:20 200:3
essential (2)
7:6 17:18
essentially (6)
42:20 51:16
172:21 232:7
235:11 251:22
establish (14)
35:18 38:1
53:14 71:8
121:1 123:14
124:15 152:23
164:8,18
167:20 172:1
204:12 270:19
established (10)
19:15 57:22
71:4 74:3
121:14 149:14
150:18 154:4
158:9 246:18
estimate (8)
77:11 101:24
128:19 182:10
186:12 198:14
198:16,20
estimating (2)
128:7 187:15
et (2)
1:4,7
euphoric (1)
67:2
Europe (1)
69:1
euthanasia (1)
69:1
evacuating (1)
216:14
evaluate (2)
53:19 81:10
evaluated (8)
32:12 53:2,7
66:8 74:24
82:14 83:23
85:5
evaluation (5)
34:1,11 47:18
53:23 233:24
evaluations (1)
34:8
evening (2)
89:12,21
event (5)
96:16 97:2
121:19 189:24
199:9
events (6)
53:23 94:16
132:4 189:2
207:10 217:8
eventually (1)
172:15
everybody (8)
58:12 64:10
112:22 123:3
144:1 150:11
231:24 246:3
everybody's (1)
114:18
everyone's (1)
142:15
evidence (1)
79:6
evidently (2)
219:19 225:22
exactly (3)
240:24 252:15
266:6
exam (1)
97:1
examination (9)
3:11 4:5,5,6,6
5:4 244:8
264:1 269:22
examining (2)
179:4 199:5
example (15)
12:8,9 14:15,21
49:12 70:10
80:16 84:8
132:19 172:12
173:13,14
227:18 259:19
259:19
excessive (1)
198:21
exclusively (1)
166:18
excruciating (4)
231:23 232:19
232:21,23
execute (3)
118:2 221:22
267:21
executed (1)
58:13
execution (65)
9:15 11:3,11
12:22 13:11,16
14:5,19,23
15:6 19:22
34:24 36:7
37:14 52:13
53:22 54:6
61:7 76:9
78:24 88:13,14
88:17 89:3
91:24 92:6
98:5,18 99:23
103:1,9,20
105:1 107:19
121:22 122:1,1
122:8,12
169:22 170:5
170:10,18
171:4 203:7
206:24 214:12
221:17 236:5
236:14,20,22
237:2 240:1
241:7,13
244:16 245:21
246:3 251:15
266:10 270:12
270:16,17,23
executions (15)
9:8,13,19,24
13:4 14:12

15:1 16:17 18:20 19:15 86:15 105:20 170:3,23 227:15
executive (2) 7:9 9:12
exercise (1) 132:2
exert (1) 44:20
exhibit (15) 10:14,15 12:13 12:15 13:3 14:18 15:3,24 19:9 94:2 108:12 137:2 159:19 169:15 169:19
exhibits (1) 94:3
exist (1) 25:6
existed (1) 94:22
existing (14) 12:2 19:19 31:22 32:3 33:6 64:24 86:13 226:23 236:16 239:18 261:13 263:12 265:15 268:4
exists (1) 35:3
exit (6) 102:16 199:22 212:19 216:13 216:16 245:14
exited (6) 128:9 136:9 149:14 194:9 203:21 218:7
exiting (2) 148:24 161:21
expand (1) 54:7
expect (14) 27:8,9,19,22 64:10 96:15,19 97:1 129:19 130:20 189:24 190:4 240:7,19
expectation (5) 51:18 94:13 96:17 132:24 141:13
expectations (1) 26:20
expected (1) 104:2
experience (9) 18:18 33:21,24 83:9,15 104:23 105:2 220:14 230:24
experienced (2) 228:14,18
experiences (1) 258:2
expert (7) 21:9,21 23:16 36:4 42:21 48:16 76:4
expires (1) 274:18
explain (2) 13:24 244:23
explained (3) 84:2 104:3,4
exploration (5) 30:2 33:21,22 34:4 54:5
explore (1) 31:24
explored (2) 70:2 166:12
exploring (4) 36:11 124:14 227:1 267:24
express (5) 89:14 164:3 205:22 214:14 215:2
expressed (4) 158:14 164:19 177:13 220:16
expressing (1) 215:18
expressions (1) 205:16
extend (1) 140:24
extent (1) 259:23
exterior (2) 102:16 112:14
external (1) 127:15
extra (1) 80:12
eye (2) 118:11,20
eyes (5) 191:10 192:6,16 206:12 225:6
e-mails (1) 100:3

F

F (1) 2:2
face (3) 137:23 173:15 206:2
facial (1) 205:15
facilitate (1) 113:5
facility (2) 7:13 99:21
facing (2) 163:14 182:5
fact (27) 21:14 30:21,23 31:19 59:21 75:6 79:20 106:14 160:1 163:6 178:2 199:9,18 212:6 212:15 221:15 221:16 223:4 223:15,15 226:22 229:24 230:2 255:7 265:11 268:19 272:4
factor (3) 20:8 95:7 219:4
factored (3) 80:14 205:7 242:10
factors (1) 154:9
fail (1) 126:24
fails (1) 201:16
fair (16) 7:20 15:12,17 32:16 78:1 88:11 111:24 128:20 156:4 159:3 216:15 249:19 250:7 250:13,16,17
fairly (1) 271:2
fall (1) 66:21
familiar (6) 5:18 41:14 99:21 102:12 123:18 124:2
family (14) 68:1 95:15 102:9,14,14 103:11,20 104:13,24 105:7,10 106:15 108:5 252:3
Famous (1) 244:14
fan (2) 138:9 139:10
far (9) 24:1 31:9 66:20 90:12 125:8,23 138:18 185:16 196:12
fashion (2) 47:14 81:13
fast (1) 41:3
faster (3) 41:8 60:4 77:14
fast-acting (2) 69:16,17
fat (1) 67:14
Fautenberry (1) 10:16
FAX (1) 1:23
fear (2) 262:11 263:14
feasible (1) 45:22
February (1) 274:18
Federal (4) 2:4,5 238:11 244:11
feed (1) 127:13
feedback (4) 47:19 150:15 157:23 195:18
feel (4) 44:15,18,20,21
feeling (1) 255:9
feet (13) 30:6,6 118:22 137:22 166:6

166:16 181:18 182:5 195:23 196:2 197:10 199:6 249:22
fellow (1) 44:13
felt (3) 143:17 161:19 209:5
female (5) 124:23 139:24 179:8 193:13 193:13
femoral (5) 70:11,12,19 71:5,8
fetch (1) 181:7
field (3) 35:24 36:4 37:9
fields (1) 266:16
Fifteen (3) 58:7 83:12,13
figure (3) 55:2 65:11 212:21
file (1) 96:20
filed (3) 232:4,19 233:5
filing (4) 95:9,11 231:21 232:1
filling (1) 99:7
final (4) 63:21 88:8 218:1 268:9
finalization (1) 12:3
finalize (2) 23:12 203:6
finalized (4) 23:11 77:24 217:21 243:23
financially (1) 274:11
find (3) 96:9 196:10,13
findings (1) 78:20
finish (1) 107:16
finished (1) 77:12
first (56) 5:2 16:24 37:10 40:8,14 43:2 47:23 48:13 53:4 54:3,16 90:20,20 93:23 96:4,7 124:1 133:20 134:1 134:17 135:15 138:12 143:19 143:20,24 148:20 151:14 157:3,9 159:6 165:13 166:3 166:13 167:7 167:14 168:7 168:11 169:5 171:22 175:20 176:5 180:21 181:24 186:11 191:10 192:5 192:16 194:7 195:3 200:17 206:1,8,8 236:9 244:24 255:15
firsthand (3) 258:8,9,10
five (10) 25:4 28:7 59:18 59:22 64:1,5 107:19 163:16 204:8 264:5
fix (1) 54:20
flash (1) 247:20
Flashback (1) 247:21
flipping (2) 138:23,24
floating (1) 98:14
floats (1) 135:1
floor (6) 1:14,21 2:14 135:15,18 195:22
Florida (2) 84:9,16
flows (1) 42:11
Flu (1) 222:13
fluids (2) 124:10 165:24
flush (3) 124:6 259:8 261:2
focus (3) 33:17 153:16 179:7
focused (3) 251:17 261:13 269:4
folks (14) 57:6 99:12 104:7 112:7,15 131:21 135:9 173:1 175:19 196:2 204:19 207:21 209:19 218:10
follow (1) 223:18
followed (2) 16:4 67:3
following (2) 54:6 76:9
follows (1) 5:3
follow-up (1) 97:13
food (1) 92:3
foolproof (2) 42:20,22
football (1) 131:5
force (1) 3:15
forced (1) 46:8
forearm (1) 124:14
foregoing (2) 274:7,8
foreign (2) 46:3,9
forget (1) 46:6
forgive (3) 96:12 123:17 263:7
form (4) 46:19 81:13 110:20 160:17
formal (1) 54:9
formalize (1) 72:21
formally (1) 258:19
formulate (1) 72:19
forth (4) 98:20 185:17 208:21 250:10
forthrightness... 244:13
forward (5) 35:6 216:19 236:14 238:14 254:24
found (1) 185:24
four (16) 11:10 16:18 45:12 77:19,20 100:8 115:7,21 116:3 118:12 118:17 121:8 128:19 130:2 249:24 266:2
frame (27) 16:16 26:24 27:2,7,8 56:18 57:16,17 59:21 72:15 73:8,22 74:1 101:14 124:16 180:7 217:9,17,20 218:17 220:5 220:10 235:3,7 235:11,14,19
frames (1) 235:16
Franklin (1) 274:3
free (1) 134:21
friend (1) 89:17
friends (2) 105:7,10
front (51) 100:8,9 114:13 115:12 118:18 120:16 121:4 128:1,10,12,22 129:5,12,17 130:5,15 133:22 134:13 135:2,7 137:17 138:23 147:11 147:14 175:6 178:17,17 180:16,19

187:19,22 191:1 192:7,9 192:18 194:10 194:18,20 195:10,22 198:2,12 202:12,24 207:3 245:24 250:24 251:24 252:9 266:21 271:3
Frost (1) 76:22
frugal (1) 89:17
frustrated (2) 139:2 207:16
full (2) 5:8 262:21
fully (1) 72:9
function (5) 9:6 41:4 48:12 91:18 140:9
functions (3) 7:6 9:11 40:19
further (12) 4:6 62:16 69:12 110:14 150:2 157:10 164:4 218:20 250:4,5 269:22 272:23
future (6) 27:22 29:2 238:16 260:23 260:24 262:11

G

game (1) 165:15
gasoline (1) 46:2
gate (2) 102:18,20
gathering (2) 74:10 82:6
Gay (2) 1:14 2:14
general (13) 1:13 2:12,13 7:7 9:16 73:22 103:24 105:23 141:14 170:2 226:20 251:1 254:10
generalized (8) 14:1 56:17 104:11 220:3 226:22 254:12 261:4,7
generally (3) 24:20 57:20,24
General's (7) 73:15 210:18 212:14,15 216:8 238:1 261:10
generated (1) 127:18
generating (1) 262:11
generation (2) 93:2 114:6
genesis (3) 34:13 256:20 266:17
gentleman (1) 39:3
genuine (1) 251:22
Getsy (2) 10:20,23
getting (38) 34:22 37:17 42:8 52:19 56:5 65:9 66:4 82:7 98:9 105:10 122:12 125:19 126:15 131:17 135:16 138:19 149:23 150:16 157:17 158:11 163:13 182:12 185:10 195:18,19 200:16 205:17 207:16 208:24 209:4 210:11 212:18,19 221:18 229:7 257:6 263:13 263:16
gist (1) 138:18
give (17) 39:12 63:24 64:1,4,4 88:22 155:24 162:3 176:24 183:8 183:10 191:8 212:7 235:4 241:12 257:7 268:10
given (31) 11:11 21:2 25:23 26:20 32:17,22 51:21 55:18 61:4 72:2 82:12 113:22 114:23 157:13 177:11 189:16 225:23 227:10 228:14 228:16 230:22 231:7 232:7 234:18 237:17 248:23 249:2 255:7 257:18 264:21 274:8
gives (6) 107:14,14 112:20 115:3 145:23 265:14
giving (3) 37:10 115:6 149:1
GLF (1) 1:6
go (87) 11:8 17:7 35:6 38:1 40:8,15 41:6 42:14 43:3,7 44:2 59:22 78:21 81:2,22 90:20 90:20 94:20 100:19,24 102:16,24 103:3,5 106:18 107:13,15,16 109:4,8,24 113:22 115:16 115:18 118:10 121:5,9,13 122:23 124:2 128:4,22 129:7 129:12 130:5 132:5 133:18 134:16,17 144:1,8 146:5 146:6,13,22 152:11 153:24 154:19 164:7 166:16 176:2 176:14 177:5 177:15 181:7 185:3 187:12 188:23 192:15 203:6 216:19 229:1 231:1 234:12 236:13 237:4 238:8,14 242:5 245:18 250:3 252:4 254:24 256:5 256:24 265:18 272:10
goal (2) 73:3,18
goes (11) 11:7 17:18 42:12 47:5 73:11 81:8 93:24 102:24 117:15 186:6 218:14
going (131) 5:19 11:24 12:7 17:22 20:14 25:20 29:6 30:24 37:17 44:15 48:23 50:3 54:20 56:24 60:13 62:12,18 66:8 66:15 71:4 72:10 73:11,13 75:6 77:2 78:16 79:1,5,9 79:14 80:13,16 81:5,13 85:3 85:15,20 86:9 86:10 91:9 92:20 94:15 96:23 97:14 98:3,5,16,17 101:7,9 107:9 107:10,13 115:11,14 117:2,2,6 118:1,2 125:23 126:8 134:8 144:20 146:24 147:4 148:2 152:9,10,17,18 154:5,14 155:5 157:10,18 158:13,20 165:5,11 166:19,21 167:19,23 171:19 176:14 180:20 184:3 185:13 197:2,4 203:1,7 208:4 210:6,19 211:2

212:19,22,23
213:1,2,9
214:23 215:8
215:16,19
216:18 219:15
220:9,18
223:23 226:18
229:3 230:20
231:5 235:2
237:21 238:5,9
238:18 241:6
241:16,22,23
262:18 267:13
268:3,6,17
270:18
good (15)
5:6 39:9 46:17
111:3,6 113:1
124:12 126:8
145:24 155:22
182:21,23
209:14 244:10
264:4
gotten (3)
25:19 104:9
126:7
governing (1)
19:15
government (1)
234:3
governor (31)
31:17 54:18,22
54:23 86:5
119:15,23
120:13 127:14
130:21 131:3,9
145:2,3,15,17
152:15 155:9
155:13,23
167:14,22
203:13 212:6
226:5 233:21
234:5,16,24
235:24 264:16
Governor's (21)
73:15 119:10,16
119:18 120:7
127:17 130:22
145:12 152:16
155:6 172:19
172:22 210:15
210:23 216:9
216:22 217:15
233:18,20
235:11 237:24
governs (1)
14:4
grade (1)
85:18
gram (3)
25:4,6 59:19
grams (5)
25:7,8,9,11
63:24
gray (3)
244:18 245:14
246:1
great (3)
209:1 228:5,16
Greg (2)
18:5,10
groin (2)
70:10,12
guards (1)
117:21
guess (53)
11:20 32:17
55:12 64:18
68:3 74:16
75:7 78:21
80:15 88:8
90:18 97:6
99:11 100:1
102:8 107:9
115:7 117:23
119:2,20 122:4
137:3 143:22
145:7,21
155:16 160:24
162:21 165:1,7
170:20 171:6
184:8 193:4
200:12 214:24
219:14 237:6
238:18,19
245:12 247:15
248:5 249:6
251:19 254:4
255:18,21
256:19 258:9
261:2 263:2
268:9
guidance (3)
14:11 20:8 72:2
guideline (1)
237:3
Guidelines (1)
170:2
guides (1)
42:3
guinea (1)
43:19
gun (1)
45:8
guns (2)
45:4,5
gutsy (1)
43:21
guy (10)
26:9 63:22 79:5
118:10 125:23
127:4 151:23
231:3 233:16
240:18
guys (12)
74:14 81:11
102:13 109:6
117:19 118:12
120:19 148:18
155:16 209:13
209:14 224:19
guy's (1)
165:5

H

Habeas (1)
2:5
hair (1)
194:13
half (15)
45:11 56:16,18
56:21 60:13
83:12,13,14
103:1,13 138:8
143:14 157:11
220:15 236:9
halfway (1)
192:3
hall (2)
91:6 271:9
hallway (39)
102:15 110:9,13
112:5 120:22
121:2 136:18
136:19,22
137:5,6,10,12
140:3,3,5,8,14
141:7,13,14,14
172:5,10
176:14 180:11
180:12,13,13
192:8 193:10
195:1 256:11
271:8,11 272:1
272:10,10,12
halt (1)
215:24
hand (10)
45:12 124:14
137:2 151:17
179:13,14
197:7 210:23
210:24 274:13
handed (1)
126:20
handing (4)
12:19 15:3
125:7,22
handle (1)
214:24
handled (2)
83:7 184:24
handles (1)
266:11
hands (5)
166:10,20
179:12 181:17
256:13
hang (1)
203:18
hanging (1)
126:2
happen (12)
78:11 79:4 83:4
97:17 106:14
112:21 146:14
156:11 157:3
185:13 202:11
210:6
happened (40)
33:9,13,18
34:13 35:4
36:16 39:23
55:2 84:10
110:6,22 112:1
114:19 118:4
123:2 126:10
136:4,6 148:7
157:6 168:19
168:20 183:21
185:21 189:21
189:22 196:23
199:13 202:9
202:21 203:4,8
203:19 211:8
223:4 232:17
240:8 247:2,4
247:23
happening (7)
34:16 92:10
115:10 123:7
127:11 131:4
219:19
happens (6)
66:21 92:12
103:16 122:24

145:24 245:16
hard (2)
135:18 143:17
harrow (1)
46:20
hate (1)
124:4
head (7)
10:4 34:6 90:16 124:8 126:17 204:6 257:17
heading (2)
82:10 162:16
heads (1)
155:24
health (2)
168:9,10
hear (13)
31:3 40:4 56:19 72:23 84:18 136:14 146:23 148:4 175:10 199:8 201:2 231:14 250:10
heard (27)
23:4 24:18 44:4 45:17 55:17 56:14 59:13 69:1 73:23 85:5 86:8 111:19 159:9 160:7,9 176:13 179:20 181:1 199:8 202:4 230:6,11 234:19,22 235:22 254:18 270:10
hearing (3)
27:24 165:7 254:4
heart (2)
41:5 179:21
Heath (2)
28:5 51:3
heck (1)
118:1
held (2)
45:12 253:13
help (5)
11:8 15:15 22:20 78:9 142:9
helpful (2)
130:4 255:21
henchmen (1)
118:17
Hennebert (3)
1:12 274:4,15
hereinafter (1)
5:2
hereto (1)
274:10
hereunto (1)
274:12
he'll (4)
81:10 119:14 145:20 264:22
Hi (1)
264:3
hierarchy (1)
56:23
higher (5)
10:2 67:20 179:21,24 180:2
highly (2)
26:13 66:24
hindsight (1)
228:21
hinted (1)
261:15
history (1)
58:11
hit (5)
41:16,17,19,20 61:11
HM (1)
49:18
hold (3)
8:13,20 214:13
holding (16)
15:17 98:17 114:8 137:17 141:17,22 177:8,20 185:7 201:4 204:19 206:24 248:7 248:13 256:5 257:16
hole (3)
247:7,11 248:2
Holiday (1)
89:14
honest (1)
110:17
honor (1)
177:2
hook (1)
125:8
hope (2)
158:11 220:20
hoping (3)
71:18 76:17 104:6
horse (1)
228:23
hospital (1)
67:18
hot (2)
138:24 149:23
hour (14)
56:16,18,21 60:14 103:1,13 107:14 143:14 154:19 157:12 206:19 219:2 220:14 231:22
hours (4)
111:3 154:5 235:4 258:20
house (24)
90:13 103:6 104:21 106:18 107:23 108:5,8 108:15,17 109:8,21 112:23 113:23 137:4 140:17 173:24 176:2 212:20 213:7 216:13,14,17 217:24 270:6
huddling (1)
173:5
human (1)
230:24
humane (2)
118:15 228:19
hung (2)
125:7 128:2
hydrated (1)
220:22
hydration (1)
221:14
hydro (1)
50:13
hydrocodone (...
66:23
Hydromorpho...
22:12,15 23:2 24:13 26:4,6 26:18 28:11 31:12 34:2,9 48:9 49:2,11 49:16,18 50:7 50:17 51:10,22 58:24 60:7 62:4,8 63:2 66:19 67:5,18 68:13,21,24
H-y-d-r-o-m-o...
22:14

I

IC (19)
91:12,22,23,23 92:5,8,9,9,13 95:23 97:3 98:22 112:24 113:2,8,20 114:1,9,10
ICs (4)
92:13 95:1 98:2 99:12
idea (10)
46:17 83:5 143:19,20 155:22 182:21 182:23 226:18 256:20 266:23
ideas (1)
225:17
identified (10)
55:23 66:12 67:5 70:18 71:21 75:24 99:10 167:11 191:4 266:9
identifier (1)
245:11
identify (2)
264:19 267:20
identity (2)
113:14 190:9
ifs (2)
152:7 153:2
illegal (1)
68:9
Illinois (2)
9:1,2
imagine (6)
52:8 76:20 77:20 148:8 207:21 223:16
imbalance (3)
47:8 48:20 50:14
immediate (4)
7:10 212:18 257:12 270:6
immediately (2)
145:1 272:14
impact (3)
259:24 260:9,14
impacts (1)

225:12
impanel (4)
85:11,14,16,20
impaneled (1)
84:11
implement (1)
236:19
implementatio...
16:10 231:22
249:7
implemented (...
237:9
implication (1)
152:14
implications (2)
259:4,13
important (4)
16:1,6 29:14
133:3
impression (3)
158:18 212:12
255:24
impressive (2)
29:16 56:2
improve (1)
263:11
improvement ...
263:1
inappropriate...
46:12
inch (4)
44:24,24 45:1
45:11
inches (1)
45:12
incident (9)
91:8,17,18
98:15 112:8
126:19 223:5
270:11,18
incidental (1)
227:21
incision (1)
44:24
inclination (1)
255:8
include (7)
20:20 32:2
60:19 70:9
81:22 148:11
188:8
includes (2)
219:6 268:7
including (4)
19:13 26:2
219:5 258:18
incorporated (...
13:7
increase (1)
67:16
indefinitely (1)
152:11
INDEX (1)
4:1
indicated (2)
40:8 190:24
Indicating (1)
39:6
indication (1)
264:21
indications (1)
157:17
individual (5)
14:3 26:17
66:21 269:7,8
infirmary (2)
204:2 213:6
inflection (1)
205:15
influence (1)
263:15
informal (1)
209:13
information (...
51:17 73:7
74:10 80:3
82:6 160:17
161:7,12
173:22 219:12
224:12 229:22
234:19 251:3
informed (8)
24:10 35:24
36:3 72:9
106:23 185:9
193:3,17
infused (1)
43:22
infusion (3)
36:24 37:11
46:11
ingesting (1)
165:24
initial (1)
98:1
initially (2)
256:6 266:19
initiate (1)
246:2
initiated (1)
196:8
inject (3)
48:19,22,24
injected (4)
46:20 48:13
52:22 87:4
injecting (1)
65:12
injection (21)
14:24 19:23
37:5 42:8
45:15,23 52:17
56:11 61:10
62:6,19,24
68:13 86:15
179:16,22
226:24 228:3
228:20 233:22
265:17
injections (4)
62:16 65:10
86:21 243:5
injunction (2)
27:24 29:15
injured (1)
43:24
inmate (32)
15:16 87:4 93:4
104:16 113:4
118:7 122:7
137:1 140:21
140:23 141:2
149:2,4 173:15
175:21 177:21
177:24 178:5,8
178:11 206:23
218:6,15
231:23 232:7
248:6 249:10
249:13 250:11
250:19 251:20
254:5
inmates (6)
61:7 207:3
221:19 225:24
227:15 245:4
inmate's (9)
102:14 104:24
105:1,7 177:5
178:10 271:3,5
272:3
Inn (1)
89:14
inner (2)
123:15 180:13
input (6)
157:23 162:9
163:13,18
200:8 215:23
inquired (1)
37:23
inquiries (1)
266:16
insert (5)
61:15 105:8
123:12 243:4
247:6
inserted (7)
43:17 44:14,19
125:4 230:8
242:23 243:2
inserting (1)
49:16
insertion (8)
14:7 15:20 30:6
37:4 44:9,22
197:9 232:10
insertions (1)
117:3
inserts (3)
41:24 42:5 82:2
inside (9)
112:12 125:6
139:12 140:22
180:1 195:1
196:3,4 247:13
insight (1)
271:4
insignia (1)
245:11
insofar (3)
25:10 29:16
57:18
instance (4)
14:5 61:9
116:13 254:14
instances (2)
247:24 257:23
institution (6)
8:8 38:19 40:2
93:4 169:22
170:9
institutional (1)
169:1
institutions (1)
19:2
institution's (2)
190:24 191:3
instructed (2)
203:21 239:15
instruments (1)
241:21
intelligently (1)
56:2
intend (1)

29:2
intended (1)
14:2
intent (1)
259:17
intention (1)
79:19
intentionally (2)
141:4 152:20
interact (1)
51:17
interacting (1)
98:21
interaction (5)
105:18 168:13 186:2,14 201:3
interactions (1)
228:8
interchangeab...
7:19
interest (1)
19:5
interested (1)
274:11
interesting (1)
48:4
interests (2)
84:14 249:4
interior (3)
70:16,20,21
intermuscular...
65:4
Internet (3)
37:17 38:4 65:21
interosseous (...
36:24 37:11 38:1 40:7,24 41:13,18 43:8 43:12 47:14 55:8,20 65:15
interosseously...
48:14,18,24 49:6 50:3,17 51:22 60:17
interpretation...
170:20
interrupt (1)
144:20
Interruption (1)
193:7
intervenes (1)
123:1
intramuscular...
52:17,24 53:17 55:8,20 56:4 56:10 57:14 60:20,21,24 61:2,10 62:6 62:13,16,19,24 65:3,10,17 66:12 69:19
intramuscular...
63:2,11
intravenous (2)
86:21 268:5
investigate (1)
53:19
investigated (5)
31:4,8 50:1 52:4 53:2
investigation (...
24:4 34:11 47:10 52:5,8 53:24 54:8 56:8 65:20 70:1 267:14 268:15
investigation's...
265:3
invited (2)
83:20 88:4
inviting (2)
82:13 85:7
involve (1)
169:14
involved (39)
12:4 16:19 17:10 18:16,24 23:20 27:6 28:19 29:10 36:17,22,23 38:2 50:16 70:6 75:12 76:1 79:2 80:7 80:8,9 82:10 83:18 86:5 88:5 106:3 153:1 165:18 171:3 187:19 200:17 225:9 226:13 233:19 238:3,6 246:3 256:1 271:15
involvement (...
9:15 11:18 12:2 16:9 24:23 70:4 75:16 84:24 107:5 109:9 179:2 238:12 269:1
involving (5)
85:6 87:13,18 155:18 169:16
IO (24)
40:16,19 45:4 45:19 46:11 49:9,11,17,23 52:3,5 53:17 57:5,6,7 60:5 241:22 242:5 242:16,16 243:12 257:22 258:2,5
irritable (2)
205:4,13
issue (51)
14:3,11 27:7 33:18,23 34:19 34:21 35:17 36:13 38:10 41:3 44:5 47:10 48:20 49:23 55:1 62:10,12 68:21 69:24 82:16 83:21 85:8 86:9 87:7,13 87:15,18 100:20 147:13 155:1 156:14 159:8 161:4 168:2 185:18 191:13 212:7 212:18 217:2 221:10,13,14 225:15 230:16 233:18 242:11 251:6 256:2 257:22 261:5
issued (1)
216:22
issues (17)
9:15 11:8 28:20 36:12 45:18 54:4 66:11 78:13 92:20 95:21 101:12 104:5 105:19 111:20 234:12 240:6 266:12
item (1)
170:8
IV (51)
14:7 15:20 30:5 30:6 38:1 40:8 40:13 41:2,12 41:17 43:2,7 44:14,15 55:14 57:11,18 58:17 60:2,18 98:9 117:3 121:1 123:22 124:15 125:4,7,19,20 125:20,22 126:8,11,20,23 127:3,7 140:24 142:22 149:13 152:23 156:7 158:5,9 159:8 160:3 228:23 229:1 243:2,3 246:18
IVs (4)
123:14 124:1 167:20 220:16

J

J (1)
208:23
jab (1)
247:9
jacket (1)
246:16
jackets (1)
246:13
job (3)
9:5 54:12 117:5
Joe (2)
53:22 55:1
join (1)
203:19
joined (4)
110:13 142:8 203:22,22
joke (1)
89:16
Jr (1)
5:10
judge (5)
29:14 76:22 228:1,2 261:16
judgment (10)
25:20 77:17,22 78:5 130:1 132:2,3,15,16 160:4
jugular (3)
70:16,20,21
Julieanna (3)
1:11 274:4,15
JUL-1471 (1)
274:19
J1 (26)
109:20,22 110:6 140:6 141:11

146:2,4,22 148:14,18 150:13,14 152:1 162:13 162:23 167:7 175:20 192:21 193:4,10 203:19,23 204:1 208:11 211:20 252:4

K

Keene (2) 10:17,19
keenly (1) 155:13
keep (8) 18:3 62:18 147:4 148:2 209:13 212:24 215:3 250:4
keeping (2) 59:20 204:5
Kelleh (1) 7:3
Kelly (1) 2:8
Ken (1) 236:4
kept (2) 105:16 226:21
Kerns (8) 7:24 45:3 118:13 120:16 134:22 135:4 135:21 146:15
key (3) 15:5 167:10 193:12
kids (1) 61:18
kind (43) 12:1 25:19 28:18,18 29:9 41:20 42:18,23 54:11 56:23,24 58:8 66:3,17 67:9 96:15 97:16,18 98:1 98:14 105:13 109:6 130:24 131:3 134:21 135:1 137:4 138:8,24 156:2 162:22 163:4 178:15 189:24 190:4 194:15 206:1,12 227:23 245:12 251:19 257:23 261:2
kinds (3) 38:7 227:17 249:5
knee (3) 135:14 246:14 246:15
kneeled (1) 136:8
kneeling (5) 135:12,13,16 195:22 201:1
knees (3) 134:6,7 135:19
knew (5) 29:8 40:1 98:16 118:15 155:17
know (131) 7:18 22:15,18 23:10,18,19 24:2 28:13,14 31:10,15 39:23 42:20 48:16,16 57:16,17 62:22 62:22 63:4 64:7 66:20 68:12,14,17,24 69:2 85:23 86:1,5,7 98:4 106:4,5 112:16 113:12 114:17 118:1,9 119:11 120:4,6,11 122:20 126:10 127:6 128:2 130:13 132:4 134:22 136:7 140:2 145:20 146:18 147:3 147:16 148:19 148:20 149:11 149:17,20 151:11 155:9 155:16,16,23 159:13,14 161:10,11 167:13 168:16 171:1 173:7 174:7 175:15 178:15 179:24 181:20 183:1 185:16 187:17 188:11,14,20 189:10,12 190:11 193:2 196:15 202:9 203:12 204:4 204:17 213:1 223:8,12,20,22 224:10,10,23 225:1 226:3,12 229:13 231:12 233:19 234:2,4 234:7 235:1 236:15 237:22 244:17 256:9 256:10 257:22 261:10 267:9 269:6,10,11,13 269:16,18 270:1,15 271:12,22 272:2
knowledge (33) 19:7 31:11,15 46:12,14,18 59:2 69:6 74:5 84:4 87:10 106:10 126:24 129:18,19 159:22 175:12 188:18 200:4,5 218:3 221:6 223:2 225:11 225:16 229:12 236:12 237:7 251:11,16 253:7 258:8,9
knowledgeabl... 66:4
known (2) 7:15 247:19
knows (2) 219:14 259:11
Konteh (1) 7:3
K-h-e-l-l-e-h (1) 7:3
K-o-n-t-e-h (1) 7:4

L

L (2) 2:4,13
label (1) 111:1
labeled (1) 137:5
lack (7) 45:6 54:18 67:3 136:23 263:15 264:9 268:13
lady (1) 193:12
laid (4) 181:23 192:5,16 264:19
landline (5) 130:11,12,15 145:9 193:21
language (3) 20:7 81:4,6
lapsed (1) 191:14
laptops (1) 101:21
large (3) 39:3 62:14 64:10
late (7) 95:9,11 231:21 232:1,4,18 233:5
law (2) 226:23 265:13
lawsuit (1) 228:6
lawyer (3) 173:23 177:19 207:24
lawyers (1) 262:21
lay (7) 22:20 35:23,24 36:3 46:22 191:10 242:18
laying (4) 149:4 181:22 182:8 255:5
layout (1) 99:21
lead (3) 224:13 230:20 231:5
leader (16) 18:1 115:15,23 116:1,2,6,11 146:18,24 147:23 148:11 185:8 208:20 218:14,16 270:2
leadership (1) 209:18
leading (2) 92:20 221:17
learn (4)

40:17 47:18
56:7 96:10
learned (9)
44:4 45:17
56:14 96:16
97:6 159:24
193:15 195:9
245:1
leave (5)
107:17 128:21
185:3 199:15
199:23
leaves (2)
86:16 196:24
leaving (2)
217:24 218:11
led (1)
205:12
left (29)
9:2 10:7 96:14
102:18 104:11
124:24 129:2
129:12 132:21
137:21 142:17
144:22 179:3,7
179:13,14
180:7 181:7,14
184:10 196:5
199:24 202:11
202:13 203:24
204:11 218:16
266:20 267:2
leg (3)
37:6,7 46:2
legal (17)
11:7,8 17:20
18:5,9 80:9
82:9,18 98:23
98:23,23 99:3
104:5 235:17
261:9,18
269:13
legally (1)
259:4
legislated (1)
142:12
legitimate (1)
249:4
legs (6)
42:13 182:1,2,8
197:11 199:6
length (3)
220:5 235:15
246:14
lethal (9)
14:24 19:23
68:13 86:15
226:24 228:3
228:20 233:22
265:16
letter (1)
208:23
let's (29)
11:22 36:13
55:2 56:4
69:22 74:12
80:11,17 85:20
86:10 88:12,22
114:2 133:18
137:9 146:16
147:5 153:16
157:11 171:20
178:18 179:7
181:12 182:12
203:9 257:13
262:18 263:14
263:17
level (10)
10:2 25:16
205:8 209:23
227:9 228:4
265:12 269:2,2
272:5
library (1)
37:17
Lidocaine (2)
49:5 50:3
lie (1)
115:17
lieutenant (2)
245:7,10
life (4)
25:5 27:17 40:1
40:11
light (3)
33:18 271:2,9
lighting (2)
112:12 272:5
lights (9)
270:24 271:4,5
271:9,11 272:1
272:8,10,13
limbs (1)
43:6
limit (2)
107:18 221:20
limitations (3)
259:20 260:4
262:2
limits (1)
27:19
line (18)
41:2,12 53:14
53:18 55:8,20
57:3,4,8 60:5
60:17 71:1
112:24 117:17
160:19 161:3
263:10,11
lines (8)
14:8 57:21
69:23 70:9
71:8,13 121:1
140:24
list (4)
10:4 39:7 75:16
116:17
listening (1)
130:7
lit (3)
271:3,6,10
liter (1)
62:20
literally (6)
42:12 44:12
67:15 84:17
118:14 243:1
literature (1)
37:18
litigated (1)
263:14
litigation (16)
5:16 238:15,16
259:4,14,24
260:3,7,10,15
260:19,23,24
262:4,11
263:15
little (19)
15:4 25:12 26:8
36:13 76:12
83:14 100:9
114:7 123:11
123:22 138:9
139:2,10 144:2
244:23 245:13
248:6 259:8
261:2
live (1)
43:17
lobby (1)
136:24
located (1)
100:6
location (1)
99:17
locations (1)
70:18
logic (1)
59:20
logical (1)
63:22
logically (1)
191:12
logistical (2)
101:12 266:12
long (31)
6:6 8:13 26:17
37:6 45:12
54:2 58:9 59:3
59:8 106:2,3
128:4 129:3
135:18 153:23
161:16 171:19
179:20 182:9
182:11 187:11
198:11,15,19
203:24 204:3,7
213:1 219:24
220:17 246:14
longer (10)
11:12 16:17
28:11 56:16
104:1 111:6
144:1 152:4
178:11 206:3
look (25)
42:1 53:4 54:3
70:7 75:8
93:19 95:14,22
108:10 118:10
124:1 148:19
152:17 159:18
161:18 165:21
166:16,21
189:1 191:16
209:13 216:4
216:21 226:23
251:7
looked (14)
45:6,11 102:2
105:15 111:1
118:20 124:3,5
166:11 173:13
182:7 196:7
198:1,4
looking (38)
13:2,10 28:7
37:18 50:23
65:9 72:3 74:1
78:5 95:3,4,6
124:12,13,14
126:13,14,18
134:5 137:19
144:18 150:4

166:2,19 170:16 174:12 179:11,24 185:10 186:13 189:1 196:16 199:4 226:23 239:17,19 264:8 268:18
looks (6) 15:5 45:8 94:4 148:23 217:14 272:8
Lorain (2) 227:22 228:7
lost (1) 59:5
lot (8) 70:3 99:24 111:6 222:17 223:16 231:20 258:14,23
loud (1) 152:14
lower (6) 37:7 65:12 152:1 165:21 196:21 272:5
Lucasville (14) 7:15,17 8:10 10:7 17:8,9 18:24 29:7 30:1 38:19,21 89:10,11 93:8
luck (1) 195:19
lunge (1) 141:4

M

main (1) 104:19
maintain (3) 35:13 248:21 268:3
maintaining (3) 32:2 159:21 239:18
major (1) 116:6
majority (1) 82:11
makers (2) 163:12 208:11
making (11) 13:22 23:20 82:7,15 83:17 87:14 151:17 153:24 177:17 237:22 238:12
man (1) 57:24
management (7) 22:23 67:8,13 67:17 107:12 109:7 168:13
manifest (1) 84:23
manipulated (1) 247:12
manipulating ... 247:18
manner (1) 79:18
manning (2) 132:20 193:9
manual (1) 124:6
manually (1) 243:4
manufacturer... 38:6
Mark (1) 21:22
marked (1) 15:4
marrow (11) 42:9,9,11,15,17 46:4,8,9 47:6 47:14 48:7
Marvallous (2) 10:17,19
Massachusetts... 23:23
massive (16) 21:19,24 22:7 23:1 25:21 27:11 28:6,11 28:12 31:13 34:9 49:21 50:10 58:23 59:7 66:18
material (1) 254:6
materials (4) 37:18 80:22 81:10,12
matter (3) 21:9 103:8 220:17
mean (38) 13:24 30:4 35:23 36:2 37:2,15 41:17 42:20 51:2,13 51:14 57:17 73:2 77:19 78:21 79:2 83:4 94:12 118:10 121:23 132:3 149:22 151:8 155:18 157:20 158:16 177:16 182:9 184:2 190:11 190:20 192:20 193:2 250:3 253:20 255:17 265:23 267:14
meaning (4) 81:15 132:7 166:5 235:7
means (8) 31:6 33:22 50:13 62:21 156:6,18 220:24 224:19
meant (4) 88:21 183:9,15 183:15
measure (1) 42:24
mechanism (1) 83:5
media (21) 101:11,13,16,18 101:19,20,23 102:1,7 107:15 107:16 109:2 113:3 114:2 212:21 216:12 216:16 217:23 266:8,11,16
medic (1) 44:19
medical (85) 14:7 23:16 26:8 38:22 46:6,7 64:24 71:12,12 80:12 96:20,23 97:13 110:11 110:24 115:3,6 116:24 117:2,8 121:13 123:4 142:4 143:2 146:1 148:23 149:1,14 150:5 150:16,23 152:21 153:3 153:13 157:20 158:4,6,21 159:1,20 160:2 161:21 163:13 163:18 165:10 167:11 168:14 168:14,21 169:2,23 174:14 178:22 178:24 183:19 185:8,18 191:7 197:21 200:20 201:2,5 204:1 204:3,11 209:3 209:4 213:16 213:20 214:7 214:14 218:10 220:11,17 230:6 246:8,12 256:15,16,24 257:13 267:7 269:12,24 270:3
medication (1) 224:14
medicine (4) 222:13 224:3,6 224:24
medics (2) 37:8 71:7
meet (4) 26:23 81:11 103:9 219:15
meeting (7) 80:20 167:6 217:10,13,17 219:13,19
meetings (3) 103:17 111:14 168:12
member (64) 11:14 38:24 39:5,16 95:16 112:24 114:13 116:5,10,14,14 117:1,1,5 120:18 123:20 123:22 124:17 124:21,23 125:3 128:17 135:24 137:24 138:13 139:11 139:13,14,16 139:18,19,24 141:9,20,24 142:4,6,7,14 142:17,19,21 143:23 149:18

149:22 150:24 151:3,7,22 158:6 179:1,8 190:12 191:8 193:6,6,8,9,13 194:2 195:23 196:3 201:2 248:16
members (61) 14:7 18:1 80:13 104:24 109:19 110:1,8,11 111:1 114:12 115:4,6,15 116:3,4,24 117:2,16 121:13 123:4 137:1,8 139:8 143:2 150:16 152:21 157:21 158:4,21 160:2 163:7 168:14 178:24 179:19 183:19 185:8,9 185:18 197:21 200:20 201:4,5 204:11 205:10 207:17 208:22 209:4 214:8 220:11,17 244:16 246:9 246:12 248:15 248:20 252:3,6 269:7,9,12 270:3
memo (3) 80:17,17 81:9
memorialized ... 254:15
memory (12) 25:3 39:8 134:11 140:10 144:16 148:22 179:11 183:24 191:18 201:16 205:21 220:2
memory's (1) 167:21
men (2) 121:8 241:6
mentally (1) 158:10
mentioned (4) 23:7 238:2 254:17 257:24
messed (1) 222:22
met (7) 5:11 20:14 108:24 146:15 187:5 194:14 269:13
method (25) 20:9 30:12,19 30:19 35:20 36:8 43:3 52:22 55:12,21 56:7 57:11 65:21 66:5 70:7 72:8 74:21 78:15,17 80:11 81:3 86:17,23 243:22 268:7
methods (16) 19:18 30:2 31:4 36:18 52:1,3 52:11 53:6 55:9,19,24 79:15 227:2 239:19 242:12 267:24
method's (1) 81:5
Midstream (1) 191:14
Midway (1) 191:11
mid-August (1) 6:8
Mike (1) 8:24
miles (2) 90:14,15
Miller (21) 113:16 114:8 131:17,19 132:1,8,19 133:11 160:14 160:16 161:1 172:24 173:3,7 173:20 174:1,4 189:10,18 219:9 253:16
Miller's (1) 132:9
milligrams (5) 25:7 26:10 63:6 63:8 64:5
milliliter (1) 63:6
milliliters (1) 62:20
mind (5) 12:19 27:5,18 72:15 192:2
mine (3) 93:7 265:12 267:1
miniature (1) 45:8
minimal (1) 242:1
minimize (1) 112:16
minimum (1) 148:17
minute (4) 69:22 77:8 126:17 163:15
minutes (43) 25:5 27:3,9,16 28:8 58:1,7,9 58:12 59:18,22 64:1,5,6 107:20 128:9 128:14 129:3 129:24,24 134:7 135:8 143:16 149:7 149:10,24 150:11 154:19 161:19 162:2 163:16 165:14 182:13,17 187:16 191:13 191:17,20 198:17 199:2 204:8 217:1 219:2
mirror (1) 112:13
misconstrued ... 82:3
misery (1) 255:5
misquoting (1) 169:17
missed (3) 133:19 199:22 227:7
misunderstan... 73:21
misunderstoo... 250:21
misusing (2) 224:13,17
mixed (1) 111:6
ml (5) 26:10 63:7,8 64:5 65:12
mls (3) 62:18,20,23
moment (5) 57:22 93:3 171:8 198:3 228:12
monitor (7) 123:6 125:3,10 125:11 126:15 144:19 172:23
monitors (4) 114:22 115:1,15 253:5
month (1) 77:19
months (1) 240:1
Moore (13) 6:16,18 8:21 153:7,7,18 203:11 210:16 210:24 212:11 212:13 253:12 262:1
Morales (1) 261:15
Morgan (6) 91:10,15,19 96:6,7 131:10
Morgan's (1) 131:16
morning (17) 3:1 5:6 90:19 92:23 93:16 94:5,9,19 95:16 96:1 97:4 98:14 110:21 245:19 245:24 264:8 265:2
morphine (2) 67:23 68:1
morphone (2) 67:22 68:4
motivation (1) 262:14
mount (1) 123:12
mouth (1) 254:20
move (4) 90:5 112:17 121:4 268:7

moved (2)
114:18 248:2
movement (5)
112:16 126:3
129:16 261:14
261:17
moves (1)
114:24
moving (5)
112:8,17 114:14
140:21 153:11
MRA (1)
1:6
multiple (2)
72:8 231:4
muscle (2)
61:12,14

N

name (6)
5:8 113:12
153:6 195:10
244:10 266:3
named (1)
274:5
names (2)
39:10,13
narrate (2)
131:3 173:11
narrated (1)
173:24
narration (1)
173:19
nature (4)
104:11 210:17
214:17 257:18
near (2)
27:22 140:5
nearest (1)
179:3
necessarily (4)
27:20 127:23
190:6 267:19
necessary (4)
169:2,24 170:13
219:24
neck (2)
70:22 166:23
need (38)
5:23 23:9 25:20
26:6 35:14
45:18 47:20
48:1 49:14
59:23 61:11
63:19 64:8
71:1,5 73:14
80:14 100:2
101:10 132:5
133:3 144:23
153:21 154:6
155:8,9,9
157:14 164:10
190:21 197:4
211:14 238:19
241:6,17 254:3
256:15 260:4
needed (6)
24:20 29:10
134:12 135:22
149:23 199:19
needing (2)
143:24 155:23
needle (10)
66:14 197:6
229:7,23 230:1
231:3 247:7,8
247:12 248:3
needles (9)
229:18,21 230:2
230:11 231:4
232:10 267:5,8
267:9
needs (3)
101:11 136:5
156:1
nervous (1)
41:5
never (15)
14:2 113:5
140:12 152:9
158:6 165:5
194:14,14
228:9,10
231:17 249:12
256:12 262:10
271:17
nevertheless (1)
32:17
new (20)
12:10 16:10,17
16:22 83:24
84:1 111:9,10
225:23 228:24
234:13,13
237:8 238:7
241:7,21,23
261:5 262:2
265:5
news (2)
95:10 264:4
Newton (2)
58:9 165:18
Nice (1)
5:11
night (5)
89:11 95:15
105:9,11 252:2
Noble (5)
8:7,14 16:16
90:8,10
Nods (1)
90:16
nonsense (1)
223:3
non-medical (2)
116:3,15
Nope (1)
112:4
normal (9)
81:24 95:13
98:18 109:13
118:23 130:24
223:24 271:3
272:4
normally (3)
129:3 204:2
245:20
North (2)
6:23 18:16
nose (1)
225:5
Notary (4)
1:12 3:9 274:4
274:16
notes (1)
3:10
nothing's (2)
32:7 242:13
notice (2)
159:17 266:15
noticed (1)
270:10
notifications (1)
17:11
notified (1)
155:14
notion (1)
229:21
November (15)
72:21 73:1,3,20
76:18,23 77:4
77:9,18,21
78:6 235:8,20
238:8 241:11
number (10)
12:22 27:3
108:11 113:13
169:20,21
170:9 229:21
265:1 268:14
numbering (2)
39:9 123:18
numbers (3)
116:20,21
139:15
numerous (1)
51:6
nurse (41)
64:23 168:9,16
172:9,15
180:16,18
184:1,11,14,19
185:4,22 186:4
186:6,14,17,20
187:11 188:8
192:10,14,20
193:16 194:4
194:10 195:17
196:4,7 198:1
198:6 200:3
228:24 229:1
229:10 246:23
247:6 256:3,17
257:9,17

O

objective (1)
236:15
observation (2)
207:9 248:21
observations (2)
143:11 205:2
observe (12)
125:19 126:1
133:23 142:3
181:16,19
195:24 196:1
197:6 200:23
201:21,23
observed (19)
43:15 99:19
119:1 123:9,10
123:13,13
128:16 134:1
135:24 143:23
181:13 194:17
195:14 200:9
201:1 205:12
205:23 206:20
observing (1)
123:6
obvious (1)
160:15
obviously (17)
17:22 18:12
29:14 30:9
39:13 57:16

70:8 73:13 78:1 99:19 120:16 140:12 160:14 210:16 219:5 239:22 258:15
occasion (8) 83:16 96:2 105:5 120:11 147:22 207:3 247:13,14
occasions (3) 51:6 106:4 254:18
occur (6) 11:5 17:19 158:13 176:5 213:21 269:3
occurred (19) 84:5,6 140:12 156:15 160:20 160:22 168:1 176:21 187:22 199:16,17 202:5 223:19 223:21 232:11 265:13 268:18 268:19,23
occurrences (1) 132:5
occurring (5) 111:15 126:3 153:2 250:19 270:5
occurs (1) 244:22
October (7) 1:15 3:2 10:1 32:11,13 73:18 274:13
offender (1) 248:22
offensive (1) 117:17
offer (1) 255:16
offered (1) 269:10
office (44) 2:4,7 6:5 73:15 73:15 90:13,22 90:24 91:6 98:15,21 99:13 99:24 100:4,12 119:10,18 120:7 130:22 145:12 155:6 172:20,22 203:13 210:15 210:18,23,24 212:14,16 216:8,9,22 217:15 227:19 233:18,20 235:11 237:24 238:1 244:11 261:10 264:4 274:13
officer (4) 222:4 245:9 250:8,14
officers (2) 244:20 245:23
officer's (1) 245:3
offices (1) 1:13
official (1) 6:8
officially (1) 258:19
Ohio (27) 1:1,13,13,15,22 2:3,6,7,10,12 2:15 7:13 9:2 13:4 24:8 25:11 30:18 35:1 36:7 54:13 84:7 85:2 226:23 274:2,4,13,17
Ohio's (1) 85:3
okay (42) 5:20 6:1 22:18 29:8 39:5 48:4 84:21 88:15 97:14 101:7 110:19 112:10 114:1 115:3,6 118:24 122:18 123:2,19 125:12 134:20 138:6 145:5,24 147:3 153:8 159:5 162:17 183:4,8,21 185:24 186:17 193:11,24 198:18 209:17 232:16 262:23 264:6 267:3 268:11
OKEY (1) 1:21
old-fashioned ... 267:14
once (27) 5:16 31:2 41:4 47:4 78:9 79:16 82:14 111:5 112:6,16 114:6,14,20 115:2,9 121:13 122:20 128:3 134:21,24 140:11 158:8 167:18 178:3 207:5 211:4 212:12
ones (7) 16:6 22:9 36:21 43:21 52:16 105:14 261:8
one's (2) 253:2 260:11
one-way (1) 112:13
ongoing (3) 9:6,10 61:23
online (2) 44:12 65:9
onset (1) 67:2
open (3) 18:4 102:20 115:12
opened (5) 9:4 19:4 34:3 84:17 194:1
opening (1) 112:11
open-minded ... 72:6
operating (2) 35:19 76:14
operation (2) 92:4 101:17
opiate (6) 22:22 26:11 27:11 66:24 69:7,11
opiates (4) 67:14,21 68:3,4
opinion (5) 33:3,5 164:3 215:18 260:8
opinions (3) 78:10 200:9 220:16
opportunities ... 263:1
opportunity (3) 107:15 212:8 235:4
opposed (5) 215:15 223:11 235:12 244:19 257:8
oppositional (1) 163:7
option (2) 84:23 165:2
options (9) 32:4,8 72:9 227:2 264:8,20 264:23 267:18 268:16
oral (1) 80:2
orally (3) 23:18 69:3 79:24
order (5) 71:1 93:24 113:4 122:7 184:20
ordered (1) 45:4
ordinary (1) 95:6
Oregon (1) 69:3
original (1) 30:24
originally (1) 158:3
OSP (7) 93:8 212:24 222:4,9,16 223:6 225:8
ought (1) 27:16
outcome (1) 96:24
outer (5) 27:18 58:8 136:9,21 172:5
outline (2) 12:7 29:21
outside (11) 40:2 76:4 114:8 128:12 172:5 180:19 196:5 253:20 264:11

264:15 269:1
overarching (1) 14:10
overheard (1) 179:23
overhears (1) 250:14
overnight (1) 95:7
oversight (2) 7:9 9:13
over-the-coun... 224:14
o'clock (6) 93:14,16 103:2 149:10 218:16 245:20

P

page (13) 4:3 93:23 94:1 108:11 116:19 149:1 159:19 161:22 169:20 178:16,19 189:2,2
pain (13) 22:23 48:20,24 66:11,14 67:1 67:7,13,16 228:15,18 255:14 258:11
painful (3) 32:20 44:5 47:5
painless (2) 20:5,23
palpating (4) 196:10,13 198:4 198:6
pancuronium ... 31:20 47:12 49:13
paragraph (1) 169:21
parallels (1) 57:5
paramedic (1) 39:23
paramedics (12) 37:9,22 38:3,15 40:4,18 42:24 45:17 65:16 242:4,4 258:1
paramedic-wi... 39:19
Parole (1) 102:20
part (39) 14:9,24 15:8,20 27:15 37:20 80:12 81:20 94:1 95:19 101:5 109:20 111:18 119:14 123:15 125:9 129:4 135:24 136:10 151:5,5 171:3 196:21 199:11 213:22 233:24 238:17 247:8 255:19 259:5 261:8,16 262:3,5,13 263:8,9 265:10 265:22
participate (1) 11:2
participated (4) 16:24 89:7 111:19 262:15
participation (... 155:12 188:20 189:13
particular (12) 47:2 51:9 66:5 80:11 81:4 94:21 95:4 120:7 126:11 126:23 222:7 260:10
particularly (5) 40:9 179:9 238:20 241:19 241:21
parties (4) 3:6 236:4 274:10,11
parts (1) 199:5
pass (3) 114:7 150:11 249:6
passed (2) 186:21,23
path (1) 52:2
paths (1) 113:6
patience (1) 244:5
patient (1) 43:2
patients (1) 46:10
pattern (1) 98:17
pause (1) 144:21
pay (1) 85:18
payroll (1) 6:8
pending (6) 76:22 259:14 260:14,19,23 262:4
pentathol (1) 69:18
pentobarbital ... 69:5,11 261:18
people (50) 8:1 38:12,18 39:9 40:1 46:15 50:16 64:11,15 67:9 67:12 68:19 71:11 75:17,23 75:24 84:13 99:10 101:13 101:23 109:13 114:2 115:5,8 116:15 122:11 132:13 133:1 133:18 139:20 140:13 141:7 141:13,19 146:17 147:17 148:8,16 150:23 157:12 167:10 188:5 190:13 206:13 211:24 218:11 259:20 260:4 260:16 262:3
perceive (2) 231:13,19
perceived (1) 266:20
perceptible (1) 44:10
perception (4) 118:16 211:5 214:19 215:7
perch (1) 127:9
performed (3) 41:4 60:1 230:1
performing (2) 91:18 271:24
performs (1) 113:17
period (30) 8:9 54:17,19 56:13,15 100:15 171:24 172:2 178:18 179:10 180:19 181:2,3 182:11 186:16 189:4 191:11,15,17 191:21 197:2,3 204:9,10 206:8 206:19 210:10 210:21 238:19 249:13
peripheral (12) 30:7 35:1 36:18 41:1 55:14 57:11,17 58:16 60:2,17 156:8 220:16
permission (1) 178:7
permits (1) 44:8
permitted (2) 177:5,7
perpendicular... 45:13
person (22) 22:21 24:21 35:24,24 36:3 43:13,22 75:21 82:4 113:7,8 113:19 193:9 248:17,19 249:20 250:8 251:3 256:15 256:16,24 257:13
personal (3) 54:5,8 66:4
personally (4) 159:11 176:15 176:20 177:20
personnel (3) 64:24 169:2,23
persons (1) 259:12
perspective (1) 206:11
pH (6) 46:24 47:8 48:20 50:14 62:10,12
pharmacokine...

59:16
pharmacokine...
51:4,8,15
pharmacology...
51:3,8,13,14
pharmacology...
77:12
phase (3)
74:7,8,9
Phillip (1)
7:24
phlebotomist (...
179:8 190:13
phone (19)
106:14 119:19 119:23 120:2 127:19,21 129:14 130:10 130:21 131:1 131:12 132:20 144:16 145:6 145:12 193:21 203:2,18 210:13
phone's (1)
253:19
phrase (1)
54:19
physical (2)
99:17 220:12
physically (8)
100:6 101:14 117:11 126:4 134:5 158:10 199:23 211:20
physician (49)
64:22 70:5 71:2 71:6 156:24 169:5,6,14,16 179:6 180:17 180:20,22 181:8,13 183:2 185:23 186:3,4 186:7,9,11,15 186:22 187:2,5 187:6,12,13,17 188:2,5,6,12 188:19 189:8 189:14 190:2 190:17 191:4 192:24 193:15 194:4,12 195:10 196:24 257:6,7,8
physicians (8)
38:12 169:1,20 169:21 170:9 171:3,10 190:8
picked (1)
138:7
picture (1)
248:8
piece (1)
126:15
pierced (2)
242:17,19
pig (1)
43:19
pills (1)
225:4
pinpointed (1)
235:14
place (20)
103:13 109:13 112:7,15,23 114:3 118:14 119:17 126:6 152:20 166:1 200:17 211:6 220:24 236:18 241:11 251:12 252:1 264:20 274:8
placed (1)
106:14
places (1)
190:15
plain (1)
246:4
Plaintiffs (3)
1:5 2:11 3:7
plan (3)
98:6 122:20 165:15
planning (4)
12:3 49:8 152:4 152:24
plate (2)
42:15,17
play (20)
131:6,6,8,8,14 131:14,17,17 131:20,20,22 131:22 132:9,9 166:21 172:22 172:22 173:1,1 196:23
Pleas (2)
228:2,4
please (9)
5:8,23 22:13 116:18 124:19 153:6 194:11 231:13,18
plus (2)
115:23 116:1
point (99)
17:7,22 22:4 27:16 29:1 31:9,16,19 37:24 43:15 49:20 55:9 58:15 59:1 64:14 73:18 82:14,19 94:23 104:2,10 108:16 109:11 110:12 114:6 114:11 122:6 122:14 128:13 129:24 130:21 135:13,23 137:4 140:21 141:8,23 142:5 142:10,17,21 143:1,14 151:2 151:24 152:22 154:4,10,10,11 154:11,16,18 154:21,23 155:21 157:16 162:11 165:8 167:18,21 170:21 171:6 172:8 174:6 181:24 186:9 195:14 199:14 199:19,24 202:13 204:24 205:5 210:14 212:3 215:22 216:18 218:9 219:19 220:10 229:9 237:17 238:7 241:14 241:16 244:15 245:12 246:5 247:6 250:8 252:19 253:13 253:16 255:13 259:9 260:6 263:20 272:13
pointing (3)
14:17,18 171:2
points (5)
15:5,6 21:18 30:7 37:8
Policies (1)
14:2
policy (60)
9:15 13:6,7,8,11 13:12,16,17 14:4,8,10,23 15:9,24 16:7 16:10,11,23 17:4,6,12 19:19 20:4,7 30:13 31:18 35:3,7,12,21 36:10 47:11 73:9,9 74:4 78:24 81:2,4,5 81:15,16,17,22 81:24 168:24 169:13,15,18 170:16 171:10 178:3 236:16 238:8,13 249:8 263:12 265:6 268:1,2,6
pool (1)
266:10
poor (1)
164:24
port (3)
42:9 45:15 71:8
portal (10)
37:5 41:24 42:5 42:15,16 242:22,23 243:8,14,15
portals (1)
34:23
Porter (11)
2:8 4:6 56:19 72:23 99:1 128:11 231:14 263:20 264:2,3 269:19
portion (1)
176:23
ports (1)
71:3
position (18)
6:2,6,7 8:5,6,13 8:17,19,20 9:1 11:18 18:8 82:8 134:10 170:22 236:13 255:9 258:22
positioning (1)
196:21
positions (1)
9:4
possibility (8)

70:15 83:1 164:21 239:4,5 239:7 265:2,4
possible (8) 34:2 70:17 74:18 166:24 187:21 220:23 259:13,23
possibly (1) 128:19
post (8) 91:3,4,7 95:1 98:16,21 114:15 197:20
post-Clark (1) 53:5
post-Joe (2) 52:6 53:20
post-Septemb... 234:10
potassium (2) 47:12 49:13
potential (4) 49:20 55:24 95:21 124:15
potentially (6) 17:20 154:15 185:13 214:15 242:14 253:19
practice (10) 11:3,11 81:24 95:3 103:7 105:22 112:7 115:20 130:24 238:19
practices (3) 233:23 237:8 241:8
practicing (1) 239:24
preanesthetic ... 47:1
precede (2) 11:11 174:21
predicate (2) 30:23 86:12
predicated (3) 25:1 84:5 112:22
prefaced (2) 44:8 47:20
prefer (1) 229:5
preferable (1) 191:7
preference (2) 71:16,19
preferred (1) 123:14
preliminarily ... 61:24 155:4
preliminary (3) 26:22 27:24 29:15
premise (3) 53:10 224:11 240:24
premised (1) 265:4
preparation (7) 28:3 107:16 110:20 114:12 121:18 122:1 238:19
preparatory (3) 49:13 107:21 246:2
prepare (1) 241:12
prepared (6) 77:5 110:19 112:6 156:1 212:7 270:11
presence (5) 3:11 213:21 248:15 263:15 274:6
present (23) 9:21 73:4 88:16 106:7 146:20 147:8,9 168:11 170:18 171:11 173:3 175:6 176:20 188:1 188:15 189:21 198:11 211:24 212:1 213:23 214:2 219:9 248:16
presentation (5) 72:17 80:2 81:20 82:7 239:12
presented (5) 78:19 79:20 81:3 164:22 240:17
presents (1) 240:16
press (8) 225:21 226:1,3 226:11 227:4 227:10 239:8 239:13
pressure (4) 42:4 44:18,20 45:14
presumption (1) 35:19
pretty (6) 21:14 25:19 142:11 143:17 252:6 270:20
prevent (2) 48:19,23
previously (7) 15:4 168:23 179:22 180:8 183:6 252:16 254:22
pride (1) 209:2
primarily (1) 43:4
primary (5) 37:5 43:9 78:15 81:3 179:16
prior (15) 25:2 28:17 36:16 52:4,13 53:9 73:7 92:20 103:1 107:18 111:15 111:19 112:7 115:5 158:5
prison (5) 18:19 88:23 101:15 224:6 245:4
prisons (7) 6:5,13 7:6,8,10 7:12 109:7
privacy (4) 248:11 251:19 251:22 252:7
privately (2) 147:21 248:12
privilege (3) 259:15 260:2,12
privy (3) 147:18 258:22 261:12
probably (14) 36:3 54:5 56:23 77:8,19 80:1 106:22 111:6 132:23 160:5 197:4 198:19 270:22 271:8
problem (5) 33:16 35:11 46:7 158:21 266:20
problematic (2) 156:9 159:2
problems (8) 95:14 98:9 130:4 138:19 159:21 220:18 240:16 267:20
procedure (8) 3:8 11:19 18:3 71:1 83:6 238:13 258:6 258:12
procedures (10) 15:5 16:4,6 52:12 71:14 109:14 130:19 233:22 237:8 241:8
proceed (11) 36:7 85:20 98:6 98:18 109:8 113:1 121:4 152:17 153:13 203:7 212:8
proceeding (3) 85:15 87:22 260:5
proceedings (1) 106:21
process (97) 12:4,6 15:21 17:1,15,18 18:4 24:23 31:1,2 32:21 41:9 44:6 50:17 54:9 72:10 75:6 76:14 78:8,12 79:3,17,17,21 80:6,14 81:8 82:5 84:15 85:2 86:4,6 92:14,20 100:23,24 103:14 104:21 105:22 107:8 110:4 111:15 112:8 114:12 121:6,16,18,22 122:1,12,15 128:4 129:5,23 130:1 131:1

135:8 138:11 139:19 149:7 149:24 152:5 153:20 156:7 157:9 162:9 171:4 172:3 178:3,7,13 187:20 205:8 207:6,7 208:3 213:9 214:12 216:5,18 217:11 218:23 228:20 230:19 231:5,23 245:16,19 246:2,3 267:12 268:4 270:17 270:23 271:20 271:24 272:13
produce (1) 238:7
produced (1) 94:3
professional (2) 233:16 274:16
professionalis... 233:17
Profusely (1) 138:22
progress (1) 66:20
project (2) 23:14 77:23
promise (1) 244:13
promoted (1) 8:22
prompted (5) 33:21 34:1 53:23 128:21 156:23
pronounce (1) 266:3
proper (3) 101:15 249:3 251:2
properly (4) 57:21 111:9 220:21 271:24
proposal (1) 183:5
proposals (1) 19:8
proposed (8) 17:23 18:2 20:3 74:16,17 82:13 83:2,22
prosecutor (3) 227:19,21 228:10
prosecutors (1) 227:14
protect (1) 190:9
protocol (63) 9:16 11:6,17,19 11:21,22 12:2 12:9,10,16,22 13:3,6,6,8,22 14:10,24 15:8 21:12,16,16 24:7 25:15 30:16,18 31:18 32:3 33:6,8,16 35:2,11 36:9 40:6,7,12 49:17 57:18 63:24 74:19 85:4 87:16,23 119:13,22 178:2 228:3,9 238:21,23 239:5,12,18,18 239:22 240:4 240:22 241:5 261:14,17 265:15 269:11
protocols (6) 37:23 65:10 130:19 233:23 237:8 241:8
protrudes (1) 100:7
provide (4) 57:8 66:8 200:19,21
provided (6) 60:10 65:3,6,24 80:23 173:20
providing (4) 131:8,14,20 200:24
provision (6) 19:21 20:4 169:13,18 171:2,9
provisions (2) 170:7 242:9
public (25) 1:12 2:4,5,7,9 82:13 83:2,16 83:20 84:22,24 85:7,7 87:7,13 87:14,19,19,24 88:4,4 264:4 265:5 274:4,16
publicly (1) 258:19
puffing (2) 223:3,11
pull (3) 43:5 224:15 247:1
pulled (1) 127:4
pulling (1) 125:19
puncture (1) 247:7
purchase (2) 221:19 223:15
purchases (1) 223:23
purpose (3) 43:20 95:5,19
purposes (3) 6:9 178:18 264:22
pursue (1) 263:17
pushing (1) 46:2
put (13) 42:5 45:13 107:10 131:24 132:23 189:18 228:18,22 229:6 254:20 255:5 256:13 270:18
putting (1) 135:14
p.m (5) 108:14 161:21 189:3 217:13 273:2

Q

qualified (5) 183:24 184:2 221:11 261:20 274:5
qualifier (1) 177:14
qualifiers (1) 169:10
qualify (2) 117:23 262:20
qualms (1) 33:7
quarterback (1) 117:20
question (35) 5:22 11:21 29:5 30:24 34:19 59:4 79:1 97:13 110:18 110:18 132:13 147:12 155:20 160:1 164:12 164:24 178:15 180:23 230:4 237:11 240:14 241:1 250:21 251:19 255:17 255:18 259:10 259:17,18 263:3,4 267:22 268:9,20 269:5
questions (18) 5:19 11:9 79:10 79:14 105:18 129:6 171:18 227:11 244:3 263:20 264:5 265:1 267:2,5 269:20 272:21 272:23,24
quick (10) 20:5,23 26:21 26:22 28:7 56:13,15 74:12 123:23 167:2
quicker (2) 41:1 123:22
quickest (3) 56:24 57:3,9
quickly (3) 48:6 51:18 67:3
quit (1) 214:20
quite (3) 123:23 262:12 263:8
quote (3) 103:23 105:14 209:12
quoted (1) 170:8
quote/unquot... 32:20 35:22 36:6 75:4 229:13

R

radio (1) 113:2

raised (3)
110:18 171:20 259:3
Randall (4)
2:8 8:24 9:2 264:3
range (2)
40:13 227:2
rank (2)
245:4,11
ranking (2)
56:24 244:20
rate (3)
41:12 56:12 57:9
rates (1)
57:5
rationalizatio...
229:5
Ravere (1)
227:21
RB311 (1)
93:23
read (22)
87:1 111:20 112:3 114:20 115:9 117:12 118:6,11,20 119:5 121:20 122:6,21 170:18 173:16 175:15 207:6 218:24 232:5 272:14,18,19
reading (11)
3:12 111:16 112:18 115:13 118:24 120:3 120:17 121:7 122:9 174:15 270:24
reads (4)
117:15 118:7 121:7 246:5
ready (20)
72:17,21 73:19 76:18 79:17 81:22 109:4 113:1 114:3 122:12 193:16 212:6 236:19 237:3,9,15,18 237:21 238:8 246:2
real (1)
251:22
reality (2)
215:14 263:13
realize (1)
244:14
really (16)
34:13 36:3 52:20 58:24 61:11 66:3 69:12 92:17 93:3 115:23 116:1 133:3 155:20 231:2 232:13 248:11
reapplying (1)
124:13
rear (1)
109:21
reason (12)
179:15 209:15 237:18,19 240:7,18,19 249:8 262:16 262:24 265:20 271:23
reasonability (...
205:9
reasonable (10)
26:24 27:7,8 150:3 152:12 164:17,20,23 214:21 228:19
reasonably (4)
56:13 154:8 235:18 271:6
reasons (1)
118:16
reassure (3)
208:24 209:6 210:2
recall (69)
28:8 37:12 45:21 61:17 69:20 72:20 76:14 90:7 91:9 94:21 96:12 97:2 108:3 109:17 110:15,17 111:13 112:2 123:17,20 124:1 125:9,13 128:15 129:13 129:15 130:16 135:14,24 138:18 139:14 142:8 144:13 145:4 147:9,22 150:14 153:14 156:3 158:16 163:9 164:15 164:16 167:8 171:23 172:16 176:6,7 179:15 181:19 182:22 185:5 186:12 193:5 194:24 195:2 196:15 196:20 198:9 204:21,23 205:19 209:10 214:5 220:4 228:1 253:18 256:11,12
recalling (2)
27:23 58:7
recap (1)
5:19
receive (2)
124:10 200:8
received (4)
27:4 47:19 104:4 106:14
receiving (1)
73:7
receptive (1)
105:13
recipient (1)
258:5
Recite (1)
210:4
recollection (47)
8:4 16:14 63:5 89:6 93:11 100:22 101:22 107:2 124:20 126:22 128:1 134:15 135:3 136:11 139:17 147:6,7 150:22 151:15,21 155:3 156:14 157:7 158:24 162:5 164:6 165:17 166:1 168:5,6,17 172:8 174:10 179:1 181:6 182:15 191:22 193:8 198:10 199:17 206:7 206:10 212:5 215:6 217:16 220:7 256:8
recommendati...
79:7 80:4
recommendati...
79:8,20 80:24 235:5
recommended...
73:9
record (18)
5:9 12:21 25:1,3 25:14 28:9 29:15 37:1 39:2,14 74:13 106:22 113:15 133:10 167:3,4 194:12 233:11
recorded (2)
129:18 173:19
recorder (1)
96:8
recording (4)
131:22 133:16 219:12,14
records (1)
223:17
record's (1)
163:17
recounting (1)
151:6
reduced (2)
3:9 269:17
reentered (1)
168:21
reexamining (1)
179:16
refer (4)
93:22 108:6 116:17 174:9
reference (2)
159:18 189:8
referred (1)
266:2
referring (13)
15:10,13 19:20 149:17,21 156:15,17 162:1 169:18 171:12 178:20 217:12 248:17
reflect (5)
93:17 94:15 108:9 188:19 228:12
reflected (6)
13:8 96:18 143:16 216:3,6 251:14

reflecting (3) 189:13 228:21 250:18
reflects (1) 175:3
refresh (2) 8:4 39:8
refreshed (1) 33:22
regard (1) 258:1
regarding (3) 251:12 256:2 259:4
regardless (1) 243:11
regards (1) 257:22
regimen (1) 67:13
region (1) 7:8
regional (14) 6:4,12,24 7:5 8:5,17,18 9:6 10:10 18:13,16 29:18 88:20 170:22
Registered (1) 274:15
Rehabilitation... 86:14 225:22
reiterated (3) 186:17 209:24 210:1
reiterating (2) 185:23,24
rejected (1) 82:23
related (2) 220:19 269:5
relates (1) 251:19
relation (1) 84:5
relative (1) 274:10
relatively (4) 26:22 28:7 39:2 58:9
release (12) 44:21 45:14 225:21 226:1,4 226:11,13,19 227:4,10 239:8 239:14
released (1) 226:7
reliable (2) 40:21 60:8
reliably (1) 59:12
relied (1) 51:2
reluctance (1) 70:5
relying (1) 79:6
remain (5) 124:10 127:21 139:4 214:13 215:10
remained (4) 128:5 129:9 141:24 173:10
remember (29) 26:7 28:16,20 46:14 100:14 103:22 111:2 113:11 119:12 123:24 124:17 135:17 138:16 143:20 152:1 158:1 161:17 165:23 175:23 176:8 177:13 177:14 179:18 182:10 191:10 203:21 214:7 246:8 257:15
reminded (4) 168:24 169:12 171:9,14
removal (2) 222:5 267:12
removed (2) 39:22 242:21
render (1) 183:20
rendered (1) 51:6
repeat (1) 265:23
repeated (1) 255:6
repeatedly (1) 151:1
rephrase (2) 259:16 260:20
replace (2) 8:16,23
replaced (2) 8:21,24
report (14) 6:15,16 7:21 138:12 162:22 162:24 163:4,5 163:18 197:13 223:5 224:17 270:18,21
reported (9) 6:7 160:3,3 197:18 222:3,7 222:16 230:10 234:17
Reporter (1) 274:16
reporters (4) 102:3 227:12 266:9,10
reports (5) 6:18 8:1 78:10 153:13 270:11
representative... 103:10
reprieve (15) 152:18 153:21 155:1,5,17 211:14 212:7 213:1 216:22 217:2,3 220:6 226:5 237:20 266:15
reprieved (1) 235:16
reprieves (2) 235:1 266:17
request (13) 24:1 76:5,8 152:18 154:1 155:5,15 174:7 175:1,7 177:2 184:1 253:8
requested (3) 175:21 252:20 270:11
requesting (4) 174:5 252:13 253:1,3
requests (2) 23:17,21
require (5) 47:1 70:7 71:9 80:11 242:1
required (1) 70:2
requirement (1) 131:24
requirements ... 20:13
requires (2) 87:9 271:24
research (39) 23:12 24:5 27:14 28:18 29:6,24 31:24 34:4,11 36:24 37:13,15,16 38:2 40:18,23 45:16 46:11,13 47:9 56:8 63:15,22 65:2 65:3,5,7,19,21 66:1,13 68:18 69:24 74:8,9 78:20 81:12 235:5 262:17
researched (1) 53:8
reside (1) 213:4
resided (1) 90:7
resides (2) 15:16 88:6
resolved (3) 77:4 100:23 104:5
respect (32) 9:7 11:10 13:3 14:13,24 16:3 23:8 24:11 26:4 28:23 32:7 35:11 44:5 58:12,22 60:7 65:17,20 66:11 85:3 86:8 87:7 109:7 122:18 153:2 171:21 190:18 209:11 220:13 228:11 259:24 260:9
respective (1) 3:6
respond (4) 54:18 146:23 147:24 255:23
responded (2) 97:15 169:6
response (7) 136:15 144:6 152:16 160:1 169:9 182:24 267:4

responsibilitie... 9:7 92:8
responsibility ... 29:11 82:5 89:18
restart (1) 259:20
restraint (2) 140:11,13
result (14) 27:2 37:4 41:23 56:13 78:22,23 97:6 110:22 165:13 173:19 174:5 235:6 240:8,20
resulted (3) 34:4 35:17 222:4
results (9) 50:21,23 51:1 65:24 97:3 223:20 231:21 232:2 234:18
resume (2) 162:16 167:19
resumed (6) 156:15 168:22 168:23 175:4 181:23 182:16
resumption (1) 210:9
retained (1) 23:16
retrigger (1) 262:2
returned (1) 139:11
reveal (1) 113:14
reverse (1) 93:24
review (17) 54:19 61:5 80:23 81:23 95:2,5,18,20 98:1 100:3 150:2 188:23 189:6 229:15 251:7,12 268:23
reviewed (3) 91:3 94:22 98:2
reviewing (1) 226:12
revised (7) 16:11,22 19:15 19:20 81:22 86:13,20
revising (1) 87:16
revision (4) 16:20 17:3,16 17:17
revisions (3) 17:6 20:3 31:2
Reynolds (4) 221:18,21 222:20,23
Richard (1) 1:4
right (108) 6:24 9:3 11:15 13:20 18:21 24:8 30:10 34:23 36:1 42:12 43:7,11 46:3,23 48:3 52:9 58:13 60:21 61:20 64:12,19 72:11 78:3 86:22 90:13 91:4 96:13 99:13 100:21 107:1 109:14 113:23 114:8 116:8,19 122:20 124:21 125:18 132:12 135:14 136:24 141:10 142:1 143:5,6 145:7 146:15 147:16 149:2,11 150:7 152:1 157:9 162:11 163:22 166:7,9 173:17 174:13,16,22 175:16 177:12 178:5 181:5,17 184:8,11 185:4 189:5 194:8,24 195:2 196:4,22 200:13 203:2 203:21 207:22 208:4,5 211:16 215:13 217:14 219:10 221:4 223:8 227:11 238:10,21 242:7,8,17,24 245:22 247:1 247:22 250:3,5 256:17,21 257:20 261:6 262:22 263:16 266:1 269:3 270:5
role (12) 9:13 17:22 86:3 88:19 92:2,17 101:5 113:17 170:24 184:6 266:6,8
roll (1) 28:19
Romell (1) 88:14
Rommel (1) 55:16
room (82) 9:14,22 14:19 15:14 30:5 57:23 91:5 96:8 101:16 102:6,13,21,21 102:23 104:17 104:17 112:13 112:14 113:9 113:19 114:22 117:13,14 119:2,7 120:14 120:15,19,23 121:9 123:3,4 123:5 127:9,14 128:5,22 129:2 129:10,17 131:18,20 132:20,22 135:2 136:21 140:24 141:1 144:9,18 145:7 146:11 147:17 148:16 160:8 160:10 161:3 172:19 173:10 176:3 177:3,4 177:15 185:7 192:12 193:19 194:9 195:21 199:18 203:9 204:19,20 208:9 209:20 209:21 211:6 216:10 245:13 253:13,17 262:21 266:21
rooms (1) 115:2
Rosie (4) 192:9 195:4 196:9 256:1
Rosie's (1) 256:16
rough (4) 51:14 77:10 182:10 241:10
roughly (12) 76:17 94:8 98:6 103:13,15 108:3 109:23 130:1 141:12 162:2 192:3 219:2
round (1) 164:7
route (1) 265:18
routine (2) 98:3 103:8
Row (6) 221:16,19 223:23 224:19 259:21 262:3
rubber (1) 243:4
rule (2) 166:19 178:10
rules (3) 3:8 5:18 208:6
rumor (1) 268:13
running (3) 44:14 89:16 225:6

S

sake (1) 245:8
saline (2) 43:23 150:19
sat (7) 110:19 139:7,9 139:13 141:19 142:18 269:6
satisfied (1) 79:13
satisfy (1) 186:21
Saturday (1) 54:6
save (1) 240:13
saved (2) 89:18 267:9
saw (10)

124:6 126:17 136:16 145:6 173:22 194:7 195:3,22 200:9 205:11
saying (20) 41:8 51:16 59:21 73:21 88:8 146:24 147:10 149:11 154:4 155:22 165:2 182:22 191:3 199:21 220:4 224:18 250:20 251:21 261:21 262:21
says (14) 5:3 19:21 63:23 63:24 86:13,20 86:22 111:2 132:15 133:11 168:24 239:14 252:12 265:16
scenario (1) 64:4
scenarios (2) 153:18,19
scene (8) 98:1 187:14 188:13 196:24 198:12 199:24 204:1 248:6
schedule (2) 68:7,8
scheduled (6) 76:22 88:17 227:15 236:5 236:10 245:20
schematic (1) 137:3
Schneider (1) 2:8
scooting (1) 250:4
scope (1) 18:20
screening (1) 236:17
screw (1) 45:8
scrubs (3) 138:24 246:10 246:11
Scully (1) 132:11
scuttlebutt (1) 225:8
seal (1) 274:13
seat (1) 139:6
seated (1) 245:23
seating (1) 146:2
seats (1) 137:8
second (45) 25:6 32:20 57:12 59:23 64:6,9 156:16 166:14 171:24 172:2 174:10 174:15,18 178:18 179:10 180:19 181:3 182:11 186:16 189:4 191:11 191:15,17,21 197:3 204:9 205:1 207:18 209:8 210:8,10 210:12,21 211:5,11,17 213:10,12,17 215:5 218:3,13 218:18 219:1 261:19
secondary (3) 42:24 78:16 81:5
seconds (3) 40:14 149:10 272:16
secure (1) 252:5
secured (1) 218:8
security (19) 115:7 116:15 117:16 125:23 127:4 139:24 141:7,13 148:7 148:16 185:9 193:13 207:21 218:11 244:19 249:4,9 250:8 250:14
see (65) 5:12 14:8 22:24 26:11 33:11 42:6 44:17 46:5 51:7 55:2 71:18 79:2,6 81:2 94:5 108:16 125:2,8 126:4 127:14 127:18 130:5 135:11 148:20 148:23 149:9 149:15 154:6,7 161:24 162:1 165:12 173:14 174:5,8 175:21 178:23 179:9 179:19 182:12 183:3,18 185:6 186:11 189:6,7 196:17,20,22 197:9 199:4,23 205:14 206:23 207:24 208:8 216:7,21,23 217:12,23 227:9 250:23 254:10 266:3
seeing (8) 27:16 46:14 63:14 105:13 111:2 124:17 125:13 127:13
seek (2) 83:2 162:8
seeking (4) 43:1 87:14,19 155:1
seen (16) 27:1 43:12 63:21 84:22 97:17 118:13 124:7,12 126:5 130:2 134:22 207:2,7 239:9 252:1 256:12
self (1) 160:3
sell (2) 221:23 224:5
selling (1) 224:1
send (2) 156:16 212:24
sends (1) 122:11
sensation (4) 47:8,22 48:8 67:3
sense (20) 14:2 27:5 30:17 41:8 43:19 44:23 72:17 77:16 80:15 81:7 98:3 105:6,13 130:8 147:17 162:15 166:20 209:1,5 218:4
sentences (1) 235:15
separated (1) 118:18
September (26) 6:9 34:1,14,21 53:2 55:5,16 76:10 88:13 92:23 93:9 108:1 113:18 187:18 198:13 199:10 222:18 222:24,24 229:14 240:21 268:18,23 269:14 270:8 270:13
sequence (1) 146:10
serious (1) 262:16
seriously (1) 43:6
serve (2) 48:11 140:22
serves (9) 25:3 134:11 140:10 144:16 148:22 179:11 183:24 191:18 220:2
service (1) 92:4
services (2) 23:15 104:7
serving (1) 101:19
session (7) 3:1 166:13,14 174:10,15,18 206:1
sessions (3) 11:3,11 89:8
set (6) 80:20,23 113:23 146:3 248:5 274:12
setting (3)

67:18 123:10 123:23
setup (2) 123:13,22
seven (3) 217:1 219:23 231:21
shaking (1) 126:17
Shank (4) 173:22 174:21 176:1,15
shared (2) 26:19 262:15
sharing (1) 80:3
Sharps (1) 267:10
Shawn (3) 91:12,14,21
she'd (1) 156:24
shield (2) 140:22 206:12
Shift (1) 113:16
shirt (4) 245:6,11 246:1 246:4
shirts (5) 244:18,19 245:5 246:1,7
shook (1) 124:8
shop (1) 224:21
Short (1) 194:13
shorter (1) 69:15
shortly (7) 108:8 135:20 175:4 179:5 181:24 182:16 203:23
shot (10) 52:19 56:5 61:2 61:6 62:3 63:17,21 64:16 118:2 157:13
shots (3) 61:18 65:1 241:22
shoulder (2) 61:8 144:22
shouting (1) 205:23
show (5) 10:4 77:18 161:20 205:3 218:2
showed (2) 180:16 240:7
shows (4) 93:19 106:22 240:5,15
shuttling (1) 185:17
side (16) 79:11 96:13 102:19 104:18 121:2 123:12 146:4 165:20 179:3,5,7 181:14,17 229:1,2 234:3
signal (2) 112:20 143:24
signature (2) 3:12 273:1
signed (1) 3:15
significant (6) 11:5 16:1,5 59:6 129:22 132:4
signs (4) 25:5 27:17 135:15 205:3
similar (6) 26:5 64:3 65:16 210:17 254:10 254:12
simply (1) 238:4
simultaneous ... 174:23 195:17
simultaneousl... 92:10
single (33) 21:11,16,19,24 22:7,12 23:1 24:12,15 25:14 25:21 27:10 28:6,10,12 31:13 32:1 34:9 49:20 50:10 58:23 59:7 62:3 63:23 72:7 78:14 201:14 201:18,21 239:20 246:24 261:14,17
sir (10) 5:6,14,17 6:14 7:1 15:22 29:20 188:18 244:10 272:22
sit (16) 9:24 30:19 32:8 32:23 71:16,24 78:4 87:11 137:1,8 165:20 221:2,6 225:15 229:12 237:6
site (3) 44:7 45:23 166:24
sites (10) 37:5 123:15 124:15 126:14 149:13 166:2,5 166:22 179:4 179:17
sitting (7) 57:24 181:22 182:3 218:7 249:20 251:3 262:20
situated (1) 250:1
situation (6) 43:10 196:11 220:12 230:17 249:9 256:6
situations (1) 232:3
six (6) 128:19 130:2 228:24 247:5 247:16 264:5
Sixth (1) 100:16
size (2) 26:18 225:1
sketch (1) 17:14
skin (4) 46:1,3 61:13 66:15
sleeves (1) 28:19
slightly (4) 40:6 56:11 252:24 263:2
slower (3) 56:9,12,22
slowest (1) 60:24
small (1) 67:19
smart (1) 79:5
snapshot (1) 192:2
SOCF (5) 7:17 8:1 9:19 88:16 92:2
social (1) 118:23
sodium (21) 21:20 22:1,7 24:15,19 25:21 28:6,12 31:13 34:10 47:11,20 47:24 48:19 50:2 58:23 59:7 62:4 69:13,18 110:19
sold (1) 222:5
soldier (3) 43:17,24 44:12
soldiers (1) 44:13
solely (2) 49:19 59:3
solemnity (1) 271:20
soliciting (1) 221:19
soluble (4) 22:22 48:6 50:13 62:10
somebody (15) 8:23 17:10,17 24:1 27:6 38:22 55:18 71:2 85:19 88:6 101:2 160:7,9 172:19 238:5
somebody's (1) 222:15
soon (2) 122:9 151:1
sorry (14) 6:11 8:18 39:4 56:19 81:16 91:13 116:21 125:16 128:11 130:13 167:17 192:15 231:14 265:23

17:15 26:12 27:6 30:17 37:16 42:24 51:5 54:16 55:23 61:17 71:21 76:13 79:21,21 80:18 81:9,9 82:4 88:22 89:16 95:12 100:19 104:19 111:14 117:16,17 137:21 163:12 167:10 195:6 208:20 211:13 237:2 241:10 264:19 269:7
sought (3) 83:17,21 153:21
sound (2) 45:7 56:2
sounds (6) 75:9 77:7 145:24 150:3 251:21 260:11
source (2) 26:16 40:22
sources (1) 29:23
south (12) 6:4,12 7:5,8 8:5 8:16,18 9:5 18:13 29:18 88:20 146:4
Southeast (1) 194:15
Southern (2) 1:1 7:13
speak (22) 18:10 32:4 34:23 48:2 52:9 66:1 68:9 71:22 102:11 104:24 105:4 110:1,3 122:15 138:2 162:12 177:8,21 210:5 252:20 253:1,8
speaking (8) 38:3 57:20 120:8 130:20 145:14 158:17 163:12 167:8
speaks (2) 87:3 175:5
specific (13) 14:1 18:2 25:13 27:2 50:23 73:23 86:23 105:17 155:20 183:12 226:11 228:10 251:4
specifically (6) 142:8 158:17 204:23 205:20 214:8 226:7
specificity (1) 227:10
specifics (1) 250:23
specified (2) 220:4 274:8
spectrum (2) 32:2 78:18
speculate (1) 239:4
speed (1) 79:11
spell (1) 22:13
spending (2) 99:20 220:14
spent (5) 70:3 98:14 99:20 124:12 163:9
spoke (4) 98:1 187:17 212:5,11
spoken (1) 38:15
spring (3) 42:5 44:21 45:14
spring-loaded ... 42:2
squat (1) 134:7
squatting (1) 134:6
SS (1) 274:2
staff (17) 19:13 20:13 104:6,9 109:12 112:24 119:17 119:24 131:4 145:18 168:14 233:20 234:7 234:24 235:23 235:24 245:4
staged (1) 102:12
stand (4) 118:11,13 120:22 121:2
standard (6) 62:23,23 65:10 245:2 267:11 269:11
standing (11) 115:12 118:16 120:16 128:12 137:16 139:4 141:10 144:18 192:17,17 194:10
standpoint (1) 107:12
stands (1) 117:18
start (26) 11:22 31:1 44:14 77:21 78:12 101:6,7 101:11 103:2 107:9 112:11 112:17 114:14 121:1 124:6 129:5 130:7 142:9 152:23 214:12 228:23 229:2 241:15 245:19 247:17 270:17
started (22) 31:1 52:2 92:24 103:24 114:11 126:13 128:8 128:23 134:5 138:9 143:22 152:4,13,19 162:12 179:11 182:1 186:13 204:7 207:6 210:10 216:13
starting (9) 112:8 120:5 122:3 123:21 123:24 197:3 205:3 207:13 266:12
starts (3) 105:22 134:22 245:17
startup (2) 101:9 107:10
state (15) 1:12 2:9 5:8 9:1 13:4 36:7 45:2 54:13 58:13 89:18 261:22 264:3 274:2,4 274:17
stated (5) 41:19 66:23 168:22 180:9 183:6
statement (2) 212:20 251:1
statements (1) 222:16
states (11) 1:1 21:10 68:12 68:15,20 84:6 84:8,10,23 85:12 190:8
stationed (12) 92:14 100:11 101:14 102:11 104:16 106:15 109:20 117:11 139:19 140:7,8 172:4
status (3) 50:19 77:23 213:3
statute (4) 194:13 259:20 260:4 262:2
statutory (5) 19:21 20:4,13 20:19,22
stay (7) 65:11 72:6 89:14 92:17,19 92:19 194:22
stayed (6) 89:17 128:1 137:20 143:12 148:8 207:21
staying (1) 226:23
stenotypy (2) 3:9 274:6
step (3) 14:3 140:22 253:19
stepped (1) 8:10
steps (4) 14:1 124:2 146:5 214:4
sterilize (1) 45:23

45:23
sternum (6) 37:7 41:15 44:2 44:3,11 45:13
stick (2) 40:13 246:24
sticks (5) 205:21 228:24 229:3,13 246:21
stipulate (1) 191:6
stipulated (1) 3:5
STIPULATI... 3:4
stood (6) 118:14,19 136:8 180:15 194:21 195:15
stop (17) 5:23 105:9,12 114:14 122:9 122:24 124:18 154:5,12 157:11,14 165:3 204:3 213:9 217:10 217:18 224:1
stopping (1) 157:9
stops (2) 204:8 225:5
Stout (15) 18:7 99:5,7,11 108:13 174:4 175:24 176:4 176:11,14,22 177:1,17 180:11 208:17
stranger (1) 187:8
strategy (1) 166:15
Street (5) 1:14,21 2:6,9,14
Strickland (3) 1:7 76:21 234:6
strike (1) 234:16
strong (1) 67:11
structure (1) 245:4
stuck (6) 229:7,16 230:18 230:18 231:3,4
study (3) 34:4 267:15,17
stuff (8) 65:8,9 80:1 101:21 162:10 225:7 258:18 266:18
subclavian (2) 70:16,20
subject (1) 84:5
subjected (1) 255:6
submit (1) 73:14
submitted (1) 73:20
substance (2) 46:3,9
substantial (1) 75:16
substantially (2) 252:24 253:2
success (1) 130:3
successful (1) 157:13
sued (1) 263:16
sufficient (3) 63:3,12 241:12
sufficient-to-c... 66:18
suggest (2) 155:8 239:11
suggested (1) 136:4
suggesting (2) 220:11 263:10
suggestion (2) 169:9 256:14
suggests (1) 239:8
Suite (3) 2:2,6,9
sum (1) 9:16
summarize (2) 40:5 132:17
summoned (1) 190:3
Superior (1) 2:2
supervisor (4) 7:10 222:3 229:2 245:6
supervisory (1) 245:3
support (1) 40:23
supports (1) 81:6
suppose (3) 37:16 56:23 78:2
supposed (5) 41:6 113:12 132:14 173:16 184:20
Supreme (1) 123:1
sure (19) 34:6 79:9 81:12 93:6 108:8 113:5,12 133:19 143:15 220:21,23 221:22 223:19 237:23 251:9 261:8 262:18 267:22 268:22
surgery (3) 228:23 229:3 246:18
surprise (1) 64:3
surviving (3) 102:22 103:4 107:22
suspect (1) 190:11
sustained (1) 67:13
sweating (2) 138:7,22
Sweeney (14) 2:2 4:5,6 5:5,11 12:15,19 74:12 74:14 93:21 231:18 244:3 269:23 272:21
sworn (2) 5:2 274:5
syringe (2) 243:21 244:1
system (7) 41:5 42:10 44:16 47:5 52:23 67:14 123:18

T

table (8) 32:5 57:24 71:22 100:7,9 146:5 252:5 263:17
tablet (1) 138:8
tablets (2) 224:24 225:1
tackles (1) 117:21
Taft (1) 54:23
take (46) 5:12,23 6:23 26:17 28:11 29:9 53:4 59:3 59:8 71:11 74:12 79:7 93:19 107:17 107:18,19,24 108:10 111:8 118:2 129:3 143:17 144:23 146:16,24 148:19 159:9 159:18 161:16 162:3 166:16 167:2 200:1 203:10 209:1 213:6 216:4 219:9 221:22 224:18 225:11 236:18 237:6 252:1 262:16 263:17
taken (10) 1:11 104:7 143:2 150:6 205:1 207:18 251:12 260:5 274:6,8
takes (3) 103:13 218:16 261:18
talk (14) 36:13 56:4 69:22 88:12 95:23 103:3 145:2,2 146:8 157:2 178:4 195:21 209:20 260:13
talked (30) 22:3 31:8 37:22 65:15 94:23 95:1 103:20

95:1 103:20 104:6 109:19 110:10 139:10 143:13 146:21 154:6 162:12 162:14 180:7,8 194:14 212:1,6 227:5 235:3 255:12 257:24 258:4 265:2 266:19 267:23 268:12
talking (48) 7:18 11:21 21:21 27:10 44:13 56:1,15 57:24 59:10 62:3,17 65:8 74:15 77:2 82:6 83:22 101:7 103:24 105:19 110:8 118:22 125:15 125:16 126:20 130:15 143:11 144:19 145:21 149:6 153:12 156:18 167:6 172:19 178:9 179:16,19 180:13 199:18 207:5 210:19 218:15 245:6 248:8 249:14 250:22 254:11 260:18,19
talks (2) 103:18 119:15
tangent (1) 263:7
tape (1) 133:16
tapped (1) 144:21
target (1) 93:13
task (1) 264:18
taxpayer (1) 89:19
Taylor (3) 91:12,14,21
Taylor's (1) 92:2
team (194) 11:3,7,7,15 14:7 15:14 17:24 18:1,3 20:12 29:16 34:12 35:5 38:22,24 39:5,16 50:16 66:1 71:12,12 80:12 96:23 97:14 109:19 110:1,8,11,24 113:13 114:12 114:13 115:3 115:15,15,23 116:1,2,3,4,5,6 116:10,10,14 116:14,24 117:1,1,5,9,16 120:18 121:13 123:4,20,22 124:17,20,23 125:3 128:16 134:1,12 135:11,24 136:24 137:8 137:24 138:13 139:8,11,13,13 139:16,18,18 140:11,14 141:20,24 142:6,7,14,17 142:19,21 143:2,23 146:1 146:3,18,23 147:23 148:11 148:23 149:1,1 149:18,22 150:16,24 151:3,7,22 152:21 153:3 153:13 154:7 156:16,21 157:17,20,20 157:21 158:4,6 159:1,20 160:2 161:21 163:7 163:13,19 165:11 167:11 168:13,14,21 174:14 179:1,8 179:19 183:19 185:8 190:12 191:7 193:5,6 193:8,9 194:1 195:23 196:3 197:21 200:20 201:2,4,5 204:3 205:4,10 207:16 208:20 208:22 209:3,4 209:22 213:16 213:21 214:7 214:14 217:10 217:13 218:7 218:14,15 219:8,13,15,22 221:7 222:22 225:17 229:23 230:6 241:7,12 244:16,19 246:9,12 248:15,16,20 252:6 267:7 268:24 269:7 269:12,14,24 270:2,3
teams (1) 110:8
tears (2) 205:23 206:13
technically (1) 92:7
Ted (2) 1:7 234:6
telephone (3) 119:6,9,12
tell (45) 9:10 10:3 11:17 19:11 21:5,15 22:9 31:21 32:10 36:21 37:10 93:13 96:4 123:9 124:7 126:4 134:8,9 138:4 144:13 145:16 150:13 152:6 157:19 161:9 161:13 184:3 186:6,18 194:17 195:13 196:12 202:22 205:11 210:6 214:5 227:23 234:22 237:16 249:3 251:24 259:9 261:22 262:12 265:8
telling (5) 44:15 113:1 122:6 221:21 250:23
tells (2) 132:1 218:15
template (1) 82:1
ten (24) 28:8 30:5,6 58:1 58:11 102:2 107:20 128:9 128:13 129:2 129:24 135:8 150:10 154:19 163:16 182:13 182:15,17 187:16 191:13 198:17 199:1 204:8 272:20
Tennessee (3) 25:2 26:2 84:9
term (11) 13:13 30:16 41:11 46:7,7 69:15 124:9 151:20 245:5 267:13 268:13
terminal (3) 114:7 249:21 250:9
terminology (3) 242:17,18 264:9
terms (46) 19:14 26:21 27:9 28:7 34:7 35:12 37:24 40:19 41:23 51:18 56:14 57:5 59:8 60:8 64:13 69:24 73:11 75:15,23 77:1 83:5 85:2 87:3 88:21 98:12 99:10 118:24 122:4 124:4,5 130:19 139:14 152:24 169:4 176:16 184:19 191:12 205:8 206:21 209:18 220:5 229:9 239:15 249:15 251:7 262:17
tertiary (1) 78:16
test (2) 125:7,20
testified (10) 21:10 28:21 29:8 52:5 76:12 111:23

198:3 207:12 246:17 252:11
testify (7) 200:22 201:5 210:7 211:3 212:2 228:8 274:5
testifying (1) 25:3
testimony (48) 16:5,23 21:18 24:18 25:2,23 27:24 28:4,17 29:17 33:10,15 51:3 52:24 58:24 59:16 60:1 63:11 70:9 73:17 76:24 89:6 97:8 126:16 127:6 133:8 141:6 148:5 151:3 160:24 166:15 171:8 197:23 202:15 217:2 222:15 227:5 244:5,15 252:18 254:18 254:22 264:7 266:3 270:10 272:4 274:6,8
thank (5) 56:3 167:5 244:6 263:21 272:22
Thanks (1) 74:14
theoretically (1) 268:3
thereabouts (1) 106:23
thing (26) 14:16 18:17 37:19 41:20 42:18,23 65:17 65:22 67:10 85:6 96:15 97:16,19 124:17 134:23 155:24 156:2 162:18 163:8 165:22 206:19 211:15 220:23 221:18 222:21 242:16
things (30) 15:23 24:10,11 29:22 37:18 45:18,19 51:24 53:19 57:20 73:16,19 74:17 75:1,8 77:1 79:4,12 87:16 92:10 95:12,12 95:17 151:13 165:6 179:15 213:18 234:14 262:13 263:11
think (107) 10:4 12:15 16:2 28:4 29:13,14 36:5 45:3 52:4 57:2 58:2,7,8 59:15 63:4,11 69:1 70:8 73:7 76:22 77:13 80:17 89:5 93:19,22 97:13 97:14 100:3 103:24 106:21 106:23 108:10 108:11 109:22 115:20 116:23 118:2,15 130:4 134:11 138:7 146:21 148:13 148:22 149:21 151:23 152:12 153:11 155:11 159:19 161:20 165:2 166:12 167:6 169:5 170:13 173:16 178:16 180:12 180:15 181:23 182:15 183:1,2 183:3 187:21 189:2 191:17 191:19 195:1 196:8 198:2 199:21 203:20 204:10 207:14 209:12 217:22 220:2,3 221:3 222:13 224:7 228:17 229:5 229:10 232:13 232:23 233:13 233:13 236:5,8 246:9 247:16 247:21 250:23 259:22 260:6 262:21,24 263:19 267:2,4 269:19 272:7,7 272:9
thinking (21) 47:6 48:13 61:22 64:13,14 77:8 135:17 137:6 144:23 152:14,23 171:11 182:17 191:12 199:1 200:16 236:7 243:24 257:11 262:14 263:8
thinks (1) 169:24
thiopental (25) 21:19 22:1,7 24:16,20 25:4 25:21 28:6,12 31:13 34:10 47:12,20,24 48:19 49:9 50:2 58:23 59:7 62:4,6 63:24 69:13 110:19 111:1
third (4) 57:14 75:21 141:9 261:19
thought (35) 29:15 85:5 96:11,12 114:16 125:14 125:16 126:18 135:15 150:18 154:22 158:9 163:14 175:4 181:1 183:15 183:16 191:12 204:6 213:17 214:21 228:14 228:17 229:9 230:22 231:7 233:1 235:18 237:14,15 250:22 257:5 257:12 270:3 271:17
thoughts (1) 231:9
three (37) 11:10 16:18 24:7 32:18 33:11,14 40:13 40:15 44:24 45:11 47:11 49:16 57:18 58:19 63:19 70:17,19 99:20 115:23 118:22 141:12 148:15 157:12 158:15 208:16 215:1 221:3,5 225:16 235:4 246:8 247:16,23 249:22,24 258:15 266:2
threw (1) 77:10
thumbs (1) 145:23
tibia (4) 37:6 41:15 44:7 45:23
tile (1) 135:18
till (2) 196:24 219:1
Tim (2) 5:11 265:1
time (169) 5:24 8:9 16:16 16:21,24 18:14 26:24 27:2,7,8 36:16 40:10 41:9 44:8 51:19 56:13,15 56:18,21 57:16 57:17,22 58:5 59:21 60:8 70:4 71:11 72:15 73:8,18 73:22 74:1 77:23 88:23 90:17 92:22 93:14 94:16 98:19 100:1,15 101:8,9,14 103:2 107:3,10 108:3 110:20 111:19 112:2,5 112:17,19 115:16 119:12 119:16 120:9 120:10,15,16 120:19,21,23 121:12 124:13 124:16 125:2 126:14 127:22 128:2,8,13,18

129:12 130:21
133:20 134:14
135:7,23
137:16 138:2
141:8,16,23
143:17 144:17
145:15 148:4
151:2,12
152:23 153:16
154:16,18,21
155:2,10
156:10,22
157:24 162:22
163:9 165:16
168:17 172:17
173:8 174:4,6
179:10 180:6
181:3,20
182:11 186:12
192:13,19
196:19 198:7
202:13,23
203:9,13,18,21
204:11,24,24
206:5,18
207:10 208:2
209:19 211:11
212:3 213:6
217:9,17,19,20
218:10,17,23
219:6,6 220:5
220:10 224:21
226:9 235:3,7
235:10,14,16
235:18 237:20
240:13 241:12
241:15 244:12
244:24 249:13
253:21 255:10
257:5,11
268:17 272:13
274:8
timeline (80)
34:7 76:13 91:3
92:23 93:17,19
93:23 94:4,8
94:11,17,22
95:3,19,22
96:16,18,22
98:2 108:6,9
114:5,6 127:18
129:18 131:22
132:1,6 133:13
133:19 143:15
148:19,20
149:9 150:3
159:18,23
160:12 161:1
161:18,20
173:14 174:9
174:12 175:3,5
175:16 186:13
188:18 189:7
189:13,19
190:1,5,13,14
190:21,23
191:16,24
204:5 216:3,4
218:2,5 219:18
241:10 248:18
249:21 250:15
250:18 251:4
251:14 252:12
253:23 254:2,6
254:11,15
270:20
timeline's (1)
174:13
times (7)
229:17 230:19
231:4 247:4,16
266:2 272:20
timing (1)
176:17
Timothy (1)
2:2
tired (4)
134:2,6 135:16
205:17
tissue (3)
62:18 65:13
173:15
tissues (1)
67:15
title (2)
6:13 91:16
titled (1)
14:18
today (35)
5:6,13,20 7:2
9:5,24 11:1
30:20 32:9
77:11,16,20
78:4 79:10
87:11 155:24
157:13,18
165:3 209:15
211:1 215:19
221:2,7 225:16
225:20 226:7
227:6,11,11
233:17 237:7
239:8 244:5
268:12
told (19)
23:5 86:9 146:1
146:11,17,18
148:24 158:5
181:14 192:12
196:9 198:5
203:12 219:15
222:2 226:19
231:5 234:19
236:22
tolerance (2)
67:15,20
top (11)
10:4 37:6,7
45:23 109:6
123:15 124:14
152:2 161:22
166:19 179:12
topic (4)
144:14 171:20
176:12 177:1
topical (1)
44:8
topics (1)
113:20
tops (4)
102:2 128:9
163:16 198:17
Total (1)
116:3
totally (2)
185:12 223:12
touched (1)
257:23
touching (1)
199:5
tough (1)
98:4
tourniquet (1)
124:13
town (2)
1:21 106:5
trailed (1)
148:13
train (1)
241:17
trained (2)
132:4 241:7
training (9)
71:10,13 80:12
89:8 91:5
238:20 239:23
241:15 242:2
transcribed (2)
3:10 274:7
transcript (2)
3:13 274:7
transition (1)
10:7
transpire (1)
95:7
trauma (1)
43:6
trays (1)
123:11
trial (4)
28:3 76:21
77:18,21
tried (4)
209:12,18
228:18 270:19
trigger (1)
114:1
trip (1)
141:2
Trout (6)
18:5,10 75:19
76:4 99:3,7
true (9)
60:16,18,22
190:11 223:10
225:13 237:11
242:3 274:7
truth (1)
274:6
try (24)
18:3 40:8 43:2
62:18 65:11
70:6 105:12
107:18 112:15
123:21 124:15
133:24 152:4
154:5 158:11
165:11 186:21
208:24 210:2
212:24 235:19
248:3,5 268:21
trying (35)
26:7 48:15,18
63:22 77:15
80:15 81:7
118:8 121:1
128:8 135:1
142:9 143:17
150:21 156:19
157:12 164:8
165:1 172:4
194:21 196:10
196:13 200:12
204:12 212:21
214:24 215:3

220:15 229:5
231:10,16
238:6 247:19
255:21 267:19
tubes (2)
30:5 243:3
Tuesday (3)
1:15 3:1 221:5
Tuesdays (1)
221:5
turn (1)
114:22
turned (8)
122:19 146:22
196:6,7 271:9
271:11 272:1
272:12
turning (1)
122:14
two (31)
10:8 14:14 17:6
32:19,20 37:5
40:12,14 44:24
51:12 63:19
70:18 72:23
92:11,13 116:1
117:1 121:12
140:15 141:7,9
154:5 169:10
169:11 179:18
206:18 221:2
247:5,23
248:20 267:2
type (19)
18:17 37:15,16
44:5 47:3,21
65:16,22 72:7
74:20 162:18
163:7 165:22
211:14 225:6
240:6 243:12
254:12 266:17
types (13)
20:10 29:22,22
31:24 73:16
78:14 79:3,15
95:17 213:18
220:24 234:14
240:16
typical (1)
24:21
typically (11)
11:4,8 49:3
62:16 67:7
81:1 95:23
103:1 105:12
207:4 268:24

U

Uh-huh (5)
116:7 186:8
200:18 216:2
248:9
ultimate (1)
81:14
ultimately (3)
79:13 212:4
213:15
ultra-fast-acti...
69:4,18
unable (3)
212:9 221:7
225:17
unanesthetize...
44:12
unanimously (...
214:10
unaware (1)
185:12
unchanged (1)
240:23
unclear (2)
186:5 230:9
uncomfortabl...
134:8 205:13
229:8,8
unconstitutio...
228:4
Undecided (1)
50:21
understand (27)
5:13,22 22:21
29:13 34:20
39:11 51:13
62:2 64:8,14
74:2 76:13,20
105:23 114:5
165:1 180:23
183:17 200:12
225:20 244:20
256:20 264:7
264:18 265:3
267:22 272:6
understandab...
105:15
understandin...
12:9 22:20
23:24 24:22
25:18 26:15
28:10 46:22
48:5 51:14
57:8 60:9,12
61:1,11 63:1
63:12,16,20
66:7,16,22
69:9 70:24
75:3 77:7
78:11 79:16
80:5 87:12,12
87:21 88:10
93:6 100:17
104:1 106:13
108:18 120:12
127:10 140:6
141:23 145:11
145:13 166:15
175:1 183:14
210:20 217:8
222:11 229:16
235:10 255:18
270:13
understood (6)
77:15 126:16
147:11 183:16
227:4 239:22
undertake (1)
23:13
undertaken (1)
76:3
undetermined...
220:10
unequivocally...
20:16 165:5
262:13
unfold (1)
64:4
uniform (4)
245:3,3,11
246:1
uniformity (1)
245:8
Unit (3)
1:14 2:5,14
UNITED (1)
1:1
universe (1)
55:23
unsuccessful (1)
40:15
unsure (1)
176:16
unusual (2)
97:20,21
upper (2)
52:21 61:8
upset (2)
95:16 139:1
usable (1)
214:23
usage (4)
31:20 32:18
47:10 49:20
use (38)
7:17 12:8 14:6
15:20 19:17
21:8 33:12
34:2 39:10
42:24 44:7
48:23 82:1
98:4 100:5
105:14 107:9
124:9 144:2
150:21 153:6
159:8,22 160:3
161:5 190:8
209:19 241:21
242:5,12
243:11 245:5
254:20 259:19
264:22 267:13
267:15 268:17
useable (2)
35:18 158:12
user (1)
158:5
uses (2)
15:14 69:3
usually (3)
93:18 100:5
141:10
utilized (1)
20:10
utilizing (1)
86:15

V

value (1)
165:19
varied (1)
40:6
varies (1)
40:12
variety (1)
41:22
various (5)
15:5 94:16
113:20 257:23
268:15
vein (24)
36:18 41:18
55:14 57:11,18
58:17 60:18
70:10 95:24
96:9 97:3
124:3,6,8
127:3 150:18
152:8 159:21

164:11 196:10 196:13 214:11 214:16 247:13
veins (35) 30:7 34:22 35:2 35:5,18 41:1 42:12 95:21 96:11,13 97:7 97:17 98:9 111:20 138:13 138:19 156:6,8 158:1,8,12 163:19 165:6 165:21 209:15 209:16,22 214:12,23 220:13 221:8 222:1 225:18 228:23 240:18
venous (22) 42:10 128:9,24 134:1 135:1 141:16 157:17 164:18 172:1 195:19 197:1 204:12 205:9 207:1,2 212:9 220:15 225:12 240:6,12,16 270:19
verified (1) 115:2
verify (2) 115:1,14
versed (1) 27:21
version (2) 16:22 68:5
versus (2) 56:24 76:21
vicinity (4) 137:14 175:7 194:20 195:6
victim (7) 43:6 102:22 103:4 104:7 107:22 113:3 231:24
victim's (8) 102:9 103:10 104:13 105:24 106:15 108:18 108:23 109:12
video (4) 43:16 45:10 127:13,15
view (11) 20:11 32:23 35:23 125:10 125:11 158:22 214:15 215:2 220:1 238:14 251:2
viewed (4) 29:11 35:12 44:12 206:3
Vin (2) 132:11,15
virtually (1) 58:12
visible (7) 96:11,13 97:7,8 97:18 115:1 242:7
visit (2) 95:13 252:4
visitation (1) 249:10
visiting (4) 101:16 102:5 105:19 248:7
visitors (4) 95:13 101:10 114:14 212:18
visits (4) 95:15 105:10 207:4 245:24
visual (1) 121:13
visually (1) 183:18
voice (1) 205:15
volume (5) 62:13,14,14,17 65:12
volunteering (1) 43:20
Voorhies (19) 1:11 3:7,12,16 4:4 5:1,10 54:3 77:1 116:18 124:19 132:21 141:6 159:19 167:5 198:11 217:12 254:11 274:5
vs (1) 1:6
V-o-o-r-h-i-e-s... 5:10

W

wait (3) 64:1,5 220:17
waited (2) 144:20,21
waiting (3) 25:4 50:24 140:14
waived (2) 3:13 273:1
Walburn (5) 94:24 98:24 99:2,12 266:5
walk (1) 102:15
walked (3) 109:18 144:17 196:6
wall (1) 196:22
want (52) 25:2 26:9 27:20 31:3,3 34:6 39:10,12 45:7 45:19 48:22,24 79:6 88:24 98:12 101:1 102:1 108:7 110:9 113:14 117:23 118:16 124:9 128:7 141:2 146:12 148:1,5 152:4 161:18 163:1,2 164:13 171:17 187:15 204:7 206:3 218:4 221:21 229:17 229:19,19 236:23 238:9 238:18 251:6 252:2,4,17 254:19,20 256:4
wanted (18) 48:19 49:10 114:16 147:23 148:2 149:20 152:3 156:23 186:23 200:13 208:8 209:6,23 254:24 255:4 255:20 261:20 268:17
wants (4) 17:17 72:3,8 214:20
warden (111) 7:24 8:1,7,10,14 9:18 10:1 11:14 16:17 17:7,9,21 18:23,24 29:7 30:1 45:3 91:11,16 94:23 98:22 99:12,13 101:6 105:5 108:13 114:21 115:3,6,12 117:15,18 118:3,7,13 119:5 120:16 120:24 121:6 121:12 122:6 134:11,13,16 134:22,24 135:3,6,21 136:5,12 142:11 143:10 143:12,12,19 144:4 146:7,15 146:24 147:15 147:20 153:10 156:23 163:11 163:11 167:9 167:13,16 168:24 169:12 169:23,23 170:12,12 171:9,14 172:11,14 178:22 180:7 180:12 181:2 182:20 183:24 184:7,10,24 185:17 186:6 187:12 188:9 188:11 189:17 194:23 200:7 201:22 202:1 203:22 208:15 211:22 214:2 222:8,9 223:18 246:5 254:12 268:24 269:13 270:3 272:18
wardens (5) 7:10,11,21 19:2 45:3
warden's (9) 90:22,24 91:6 98:15,21 100:8 100:12 134:21 224:11

warnings (1)
45:22
warrant (30)
111:16,20 112:2 112:18 114:20 114:21 115:9 115:13 117:12 117:15 118:6,7 118:11,21 119:1,4 120:3 120:17 121:7,8 121:19 122:6 122:21 207:5 216:22 218:24 232:5 246:6 270:24 272:18
warrant's (1)
272:14
wasn't (26)
6:8 16:16 34:16 35:5 43:24 59:4 98:23 123:23 124:8 126:14 128:18 139:20 144:20 147:7,9,12 154:15 168:6 198:14 200:5 207:24 210:10 211:7 229:8 265:10,22
waste (1)
267:12
watch (1)
208:8
watched (2)
43:16 195:16
watching (7)
124:1 125:3 137:1 151:12 172:23 192:17 206:13
water (4)
22:21 48:6 50:13 62:10
watery (1)
225:6
way (33)
7:7 9:16 10:9 11:4 29:11 35:6 41:19 43:18 48:12 52:2 55:6 74:21 81:2 87:5 88:22 96:14 128:5 137:20 159:3 160:21 164:16 164:22 189:11 194:22 195:20 205:22 221:11 230:7 239:23 240:5 247:8 262:19 263:18
ways (1)
225:23
wear (2)
244:20 245:10
wearing (3)
244:17 246:9,10
wears (1)
138:23
week (1)
99:20
weeks (7)
77:19,20 221:2 221:3 225:16 240:1 258:15
went (54)
54:20 63:23 90:24 91:2 94:24 95:1,24 96:4 101:24 109:18 110:9 111:7 123:3,4 128:10 129:5 130:14 135:13 136:17,21 141:22 142:18 143:12 146:8 148:18 150:13 150:19 156:21 164:7 165:12 167:22 169:8 174:14 179:21 180:8 182:13 183:23 191:2 191:17 192:11 192:23 194:18 195:21 202:12 208:22,23 228:7,13,22 233:3 246:17 256:7 266:15 266:21
weren't (11)
139:9 151:11 157:16 165:7 189:21 195:19 214:22 215:8 215:10,16 257:20
West (2)
2:2,6
we'll (3)
154:19 157:2 164:11
we're (79)
5:12 13:10 20:9 27:10 36:11,12 56:15 57:24 65:8 71:20 72:17,19 74:1 74:8 77:1 79:6 80:3 82:5 83:21 85:15,15 85:20 86:9,10 86:12 87:15,22 99:21 107:11 113:1,1,12,23 114:3 116:19 116:19 118:22 120:4 122:3,23 126:20 130:8 144:22 146:24 149:6 152:17 152:18 154:5 155:4,5 158:19 163:21 165:5 170:16 171:6 178:16,19,19 186:16 204:8 210:19 213:8 215:3,18 220:17 226:21 226:22 233:13 237:18 239:15 239:17 246:1 262:17,18,22 263:13,16 267:23 268:3
we've (42)
5:11 21:13 23:12 24:18 31:8 39:3 49:15 55:23 59:12 70:8,18 71:17 75:1,2 79:13 90:23 92:8 99:19 107:8 109:22 114:11 123:11 129:4 157:11 157:12,12,13 165:13 189:4 195:9 216:11 219:1 221:10 240:12 243:23 244:24 249:3 254:18 256:15 257:22 270:10 270:10
whatsoever (1)
201:12
what-if (2)
153:18,19
WHEREOF (1)
274:12
whichever (1)
40:14
white (10)
244:19,21 245:5 245:5,10,14 246:4,7,13,14
Wilburg (1)
266:4
Wille (7)
2:13 10:12 12:18 259:9,22 260:8 272:24
willing (9)
153:24 156:24 169:3,11 183:7 184:4 192:13 215:3 257:7
window (4)
73:8 77:14 107:17 137:20
wiping (1)
173:15
withdraw (1)
247:8
witness (28)
3:7,11,14 4:3 9:13 10:9,19 10:20 12:20 14:15 56:21 73:1 77:16 93:22 108:4 115:2 176:3 177:3,15 197:22 208:9 231:16 252:13 253:3 266:10 274:7,8,12
witnesses (25)
101:19 102:8,14 102:22 103:4 103:10 104:15 105:1,24 107:22 108:18 108:23 109:12 112:9,17,19 113:3,4 114:2 114:18 177:5

216:14 231:24 242:7 252:17
women (1) 241:6
wondering (1) 258:4
word (12) 67:22 98:4 104:4 107:8 150:20,21,24 201:14,18,22 233:1 267:15
wording (2) 132:17 253:1
words (33) 16:3 19:21 20:11 27:9 34:24 46:20 48:12,15 51:12 54:8 72:24 87:15 108:4 122:15 133:15 138:16 142:13 142:14 162:24 164:23 165:15 170:17 172:3 177:4 178:10 184:16 190:1 198:20 227:7 231:15 240:17 244:14 254:20
work (10) 43:3 75:23 84:3 90:1 99:24 134:17 145:3 165:16 204:2 204:12
worked (2) 83:10 182:2
working (17) 20:12 57:21 101:6 127:7 136:1,2 142:19 151:4 179:10 182:1 185:19 196:16,18 199:10 204:3 226:4 246:24
works (3) 6:19 18:10 226:8
worry (1) 158:20
worse (2) 233:4,7
worth (1) 21:17
wouldn't (13) 14:8 27:20 33:7 64:3 103:23 160:11 189:24 190:4 191:2 224:5,7 227:9 240:10
write (1) 132:14
writing (6) 3:9 23:18 79:23 80:2 81:13 269:17
written (15) 13:16,17 14:23 15:24 16:7,23 17:11 35:8,21 36:9,10 37:18 81:10,17 169:14
wrong (6) 28:8 54:20 57:2 89:7 131:19 268:19

X

X (1) 27:3

Y

yard (2) 102:16 103:5
yeah (40) 10:13 11:22 17:17 27:13 66:22 72:19 100:2 115:10 118:23 132:10 136:7 148:5 151:24 152:6 156:20 158:16 162:11 165:4 166:18 169:17 172:23 182:20 182:22 183:6 192:4 194:3 203:11 205:24 208:22 215:2 215:17 218:6 220:2,23 223:18 229:7 239:2,10 271:8 272:17
years (2) 83:10,14
yelling (1) 205:23
Yep (1) 206:16
yesterday (3) 77:20 226:4 266:15
YouTube (1) 42:2

0

01-CON-11 (1) 12:22
08 (1) 8:15
09 (11) 6:10 8:15 10:1 12:11,23 13:19 16:11,22 19:9 32:11,13

1

1 (2) 63:6 68:7
1:00 (4) 108:7,8,14 109:16
1:01 (1) 108:13
1:30 (1) 107:11
10 (5) 2:6 64:5 116:5 121:9 169:20
10:00 (6) 93:14,16,18 103:2 107:13 245:20
1020 (1) 2:6
11 (4) 116:10 121:9 138:8 246:9
11:30 (1) 101:1
12 (2) 169:15 225:1
12A (6) 12:14,15 13:3 15:24 19:9 169:19
12th (1) 236:7
12:30 (2) 101:8 106:22
12:45 (1) 106:22
13 (1) 15:4
14 (10) 10:5,13,22 12:23 13:19 16:11,22 19:9 58:9 249:7
14th (5) 10:23 89:12 93:8,9 94:5
15 (31) 10:21 34:14 53:2 55:16 58:1,11 76:10 83:14 113:18 128:9,13 129:24 135:8 150:10 161:19 182:14 187:18 198:13,17,23 199:10 222:18 222:24,24 229:14 234:10 240:21 268:18 268:23 269:14 270:8
15th (14) 34:1,21 36:17 52:14 55:5 88:13,17 92:23 99:23 108:1 161:22 228:11 230:17 270:12
150 (6) 1:14 2:14 26:10 63:6,8 64:5
16 (7) 2:14 7:8,9,11 116:14,22 121:9
16th (1) 1:14
16-by-6 (3) 140:5,14 141:14
17 (17) 39:5,15,16 117:5 120:18 139:15 142:6,7 142:21 150:24 151:3,13,20 179:4 181:16 190:12 215:1
18 (5) 38:24 39:4 229:17,19 230:18
180 (1) 90:15

19 (1) 274:18

2

2 (5) 68:8 76:23 77:4 77:18,21
2nd (1) 1:21
2:00 (4) 95:16 149:10,10 218:24
2:04-CV-0115... 1:6
2:12 (1) 150:4
2:30 (2) 149:9,9
2:31 (1) 150:6
2:35 (1) 273:2
2:42 (2) 148:23 161:21
2:47 (1) 149:4
2:49 (1) 173:14
20 (5) 27:15 161:19 162:2 163:14 230:19
2006 (1) 53:20
2009 (6) 1:15 3:2 12:8,16 249:7 274:13
2013 (1) 274:18
21 (20) 117:1 120:21 123:20 124:21 125:3,15,18 128:17 138:13 139:11 141:24 142:19 151:7 151:16,21,22 179:4 181:16 215:2 229:17
22 (5) 229:19 230:2,5 230:6,11
222 (1) 1:21
223-9481 (1) 1:22
224-5724 (1) 1:23
224-9481 (1) 1:22
23 (5) 229:17 230:2,5 230:6,11
24 (2) 111:3 225:1
244 (1) 4:5
25 (2) 162:2 163:14
25-minute (1) 162:6
250 (2) 2:9,9
264 (1) 4:6
269 (1) 4:6

3

3 (1) 169:20
3:05 (4) 161:23 174:13 174:17 189:3
3:11 (1) 159:20
3:48 (2) 218:6,17
30 (5) 27:16 143:16 149:10,24 165:13
30th (1) 238:8
304 (3) 149:1 159:19 189:2
305 (2) 108:11 161:22
35 (3) 191:17,19,24
36 (1) 225:1

4

4:00 (1) 218:16
4:07 (5) 216:9 217:9,13 217:17,23
4:16 (1) 216:17
4:22 (1) 216:21
4:24 (1) 217:5
40 (5) 149:6 165:14 191:17,20 192:1
430 (1) 2:2
43215 (4) 1:22 2:6,10,15
44113 (1) 2:3
45 (2) 149:6,10
48 (1) 258:20

5

5 (18) 4:5 25:4,6,7,9 25:11 32:11 59:19 62:18,20 62:23 63:7,8 63:24 64:1,4,5 65:12
50 (2) 89:18 219:2

6

6 (9) 1:15 3:2 32:13 73:18 139:16 139:18,19 193:9 194:2
6th (2) 32:14 221:5
60 (2) 40:14 219:23
614 (2) 1:22,23

7

7:30 (1) 88:24
7:35 (2) 90:19 92:22
7:45 (1) 89:1
71 (1) 10:12
73 (1) 14:18
74 (1) 15:3
76 (2) 94:2 108:12

8

8 (11) 116:14,22 121:9 138:8 236:6 237:10 240:5 240:15,20,22 241:13
8th (1) 236:8
8-by-20 (1) 137:12
8:00 (1) 94:19
8:30 (1) 1:15
8:49 (1) 94:5
800 (1) 1:22
81 (1) 10:11
820 (1) 2:2
85 (1) 137:2

9

9 (30) 117:1 120:21 123:22 124:17 124:23 125:17 128:17 134:1 134:12 135:11 135:24 136:12 136:14 137:24 139:14 141:20 142:14,17 143:23 149:18 149:22 179:1,8 181:14 195:23 196:3 201:2 215:1 246:9,10
9th (1) 274:13
9/15 (1) 109:17
9/15/09 (1) 159:20
9:00 (1) 107:12
9:20 (1) 103:3
9:30 (2) 93:18 103:3
9:45 (1) 94:8
90 (2) 40:14 90:14